# SUPREME COURT OF THE UNITED STATES

## OCTOBER TERM, 1943

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## No. 7

HARTFORD-EMPIRE COMPANY, F. GOODWIN SMITH, BARTLETT ARKELL, ET AL., APPELLANTS,

*vs.*

THE UNITED STATES OF AMERICA

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## No. 8

CORNING GLASS WORKS, EMPIRE MACHINE COMPANY, ALEXANDER D. FALCK, ET AL., APPELLANTS,

*vs.*

THE UNITED STATES OF AMERICA

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## No. 9

OWENS-ILLINOIS GLASS COMPANY, WILLIAM E. LEVIS, E. F. MARTIN, ET AL., APPELLANTS,

*vs.*

THE UNITED STATES OF AMERICA

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## No. 10

HAZEL-ATLAS GLASS COMPANY, J. HARRISON McNASH, WALTER H. McCLURE, ET AL., APPELLANTS,

*vs.*

THE UNITED STATES OF AMERICA

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## No. 11

THATCHER MANUFACTURING COMPANY, H. C. MANDEVILLE, R. W. NIVER, ET AL., APPELLANTS,

*vs.*

THE UNITED STATES OF AMERICA

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JUDD & DETWEILER (INC.), PRINTERS, WASHINGTON, D. C., APRIL 29, 1943.

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Q. What did you reply to that?

A. Told him we would not accept that; were not interested in disposing of our business at those figures, and the [fol. 2943] conference continued in New York.

Q. Who participated in that conference in New York?

A. Mr. Frank C. Ball, Mr. George Ball, and one of the Ball Juniors—I don't recall which—and their counsel from Indianapolis, Mr. Hornbrook, I believe. Throughout the day we discussed the situation. Along early in the afternoon it was decided that the matter would conclude with the Knox people selling their fruit jar business to Ball Brothers.

Q. What happened after that?

A. Later on in the afternoon the negotiations resumed. I advised them that the only proposition that Knox would be interested in, and would surrender their right to manufacture fruit jars on the Knox-O'Neill Vacuum machine, would be for the Ball people to pay the Knox group not less than $100,000 for the business; that is, the molds and the right of the fruit jar position, any position thay might have; and that Hartford-Empire would be required to surrender, or to credit the Knox account, or to cancel at least, $44,000 of obligations of the August, 1932, note obligations.

At that point there was a great deal of discussion, and Mr. Goodwin Smith entered the conference. This was very late in the afternoon. Without much more ceremony, Mr. Hornbrook drafted a letter setting forth the fact that these things would be done and the deal concluded.

[fol. 2944] Q. Was the drafting of that letter followed by the drafting of a formal agreement?

A. Yes, the March, 1933, agreement.

Q. Was that letter to which you have referred signed by both parties to the agreement?

A. It was signed by Mr. F. C. Ball, I think, only.

Q. Did you sign it?

A. I don't recall that I did. I think that that letter was signed by Mr. F. C. Ball, in the Biltmore Hotel, New York, setting forth the fact that these things would be done.

Q. Did Mr. Goodwin Smith sign the letter?

A. No, I don't think he did. I don't recall that his signature appeared.

Q. During those conferences, was there any discussion with reference to your refraining, or the Affiliates refraining, from engaging in the fruit jar business for any period of time after the conclusion of the agreement?

A. Yes, sir.

Q. What was that discussion?

A. Fifteen years.

Q. Who suggested that?

A. I believe Mr. F. C. Ball.

Q. I am going to show you Government's Exhibit 196. Will you look at this exhibit and tell the Court whether or not that is the contract which was executed subsequently to the letter which you say was written in New York?

A. Yes, sir.

[fol. 2945] Q. Following the execution of that agreement, were the properties or assets described in that agreement transferred to Ball Brothers?

A. Yes. Molds, only, was all that was covered by the agreement with respect to equipment, and I think they were shipped to the Ball Brothers Company subsequent to the execution of that agreement.

Q. In accordance with that agreement, have you refrained from engaging in the fruit jar business ever since that time?

A. Yes, sir.

Q. Was there any sort of consummation on the part of the Hartford-Empire Company with reference to the reduction of your indebtedness in the amount of $44,000?

A. Yes, I believe there was an exchange of correspondence which resulted in the cancellation of notes equalling $44,000, and they were returned to our company.

Q. I am going to show you Government's Exhibit 197, which is on the letterhead of the Hartford-Empire Company, addressed to the Knox Glass Bottle Company, under date of March 29. Will you look at this letter and tell us whether or not that is the letter to which you have just made reference, in which a discussion was had concerning the cancellation of notes?

A. Yes, sir.

Q. Were those notes mentioned in this letter returned to your company, and did you then send new notes in [fol. 2946] amounts totalling $44,000 less than the amounts that were sent to you?

A. I think that is the way it was handled by our treasurer.

Q. In October of last year, did you receive any notification from the Hartford-Empire Company with reference to the change in your license agreement?

A. Yes, a letter under date of October 8 or 10, I believe.

Q. By virtue of that notification are you now able to manufacture fruit jars in view of this contract entered into with Ball?

Mr. Haight: Your Honor, I think that that calls for a legal conclusion.

The Court: The objection will be sustained.

Q. You told us a little while ago, Mr. Underwood, that you continued to manufacture milk bottles after the license agreement had been signed in the same amount that you had manufactured prior to the time of the signing of the license agreement. What did you eventually do with your milk bottle business?

A. During the latter part of 1932, we were notified by representatives of Hartford that we should begin to get within our limit which was set forth in the agreement, as soon as possible. Appreciating the fact that we were so set up that we could not reduce profitably——

Mr. Emery: Just a moment. If the Court please, I think he is now making an argument. I move to strike [fol. 2947] that latter part.

The Court: Yes, from "Appreciating the fact," strike it out.

Q. Tell the Court what you did with your milk bottle business.

A. We sold it to the Thatcher Manufacturing Company.

Mr. Emery: Objection to that, Your Honor. That would call for a conclusion also.

The Court: The objection will be sustained.

Mr. Freed: If the Court please, it seems to me at least why a person disposes of his business is competent to show.

The Court: I think you may get at it in some way other than asking for his conclusion.

Q. At the time you were manufacturing 150,000 gross of bottles per year, you told us that business was

profitable. When the rate was fixed at 75,000 gross per year, was your business profitable on that basis?

A. Not under the particular set-up that we would be obliged to manufacture the glass.

Q. Under what set-up would you be obliged to manufacture glass if you made only 75,000 gross?

A. It would require a partial furnace operation equal to about two machines.

Q. What would be the result of that?

A. Insofar as our particular set-up was concerned, it would be unprofitable in our opinion.

[fol. 2948] Q. Because of that, what did you do?

Mr. Emery: Objection to "because of that." That is a matter of argument also.

The Court: Yes, that part of it may be stricken from the question.

Mr. Freed: I will withdraw that part of the question.

Q. What did you do then with reference to the sale of your milk bottle business?

A. Sold it to Thatcher Manufacturing Company, Elmira, New York.

Q. Tell us just how that sale was brought about.

A. I contacted Mr. Mandeville, then chairman of the Board of the Thatcher Manufacturing Company, early in December, 1932.

Q. What is his full name?

A. H. C. Mandeville.

Q. You say he was chairman of the Board of Thatcher?

A. Yes, sir.

Q. Where did you contact him?

A. In Elmira, as a result of an appointment made with him.

Q. Did you discuss with him the question of the proposed sale of your milk bottle business?

A. I did.

Q. Relate to the Court what was said.

A. I advised Mr. Mandeville of our situation, and asked him if he would be interested in purchasing our milk bottle [fol. 2949] business. He told me that he would be.

Q. Why did you go to Mr. Mandeville?

Mr. Emery: There, again, Your Honor, I object. He is asking again why he did so and so. I think that is not competent.

The Court: Overruled. He may answer, if he knows.

Mr. Emery: Exception.

A. I contacted Mr. Mandeville because he headed the leading manufacturer of milk bottles in the industry.

Q. Did you come to an agreement with him with reference to the sale of your milk bottle business?

A. I did.

Q. Will you relate to us what was said as to the terms of the agreement of sale?

A. We agreed to dispose of our milk bottle business to Thatcher Manufacturing Company upon the basis of accepting from them in consideration milk bottles in an amount equal to $250,000 at our market levels; and in addition thereto, 15,000 shares of their common stock, then selling at about seven or eight dollars per share.

Q. Did you purchase any milk bottles from them subsequent to that agreement?

A. Yes. We are purchasing today from them.

Q. From the Thatcher Manufacturing Company?

A. Yes, sir.

Q. Were the terms of the agreement with reference to the sale drawn up in writing?

[fol. 2950] A. Yes, sir.

Q. I am going to show you Government's Exhibit No. 242, and ask you whether or not that is the agreement drawn and executed for the sale of the milk bottle business?

A. Yes, sir.

Q. With reference to the Thatcher deal, I want to go back to the time of the license agreement with Hartford, when there was a discussion on the subject matter of the number of milk bottles that you would be permitted to manufacture under a Hartford license. Was anything said with reference to Thatcher's rights to manufacture milk bottles by representatives of Hartford?

Mr. Emery: I assume this comes to what I directed Your Honor's attention to a while ago. For the time being, it is not binding upon Thatcher.

The Court: Yes.

(Question read.)

A. Yes, they informed us they were not free to give us a license to manufacture milk bottles, on account of previous commitments made, among which was the substantial commitment to Thatcher.

Q. In connection with the execution of this agreement with Thatcher, did you have an agreement executed or some papers executed with Hartford-Empire Company in which they approved your contracts with Thatcher?

A. I don't recall, Mr. Freed, in detail.

Q. I am going to show you, to refresh your recollection, [fol. 2951] Government's Exhibit No. 243, a photostatic copy of it, and ask you whether or not, in connection with the execution of the agreement with Thatcher, this agreement with Hartford was executed.

Mr. Emery: If the Court please, I think the question of whether it is connected or not is one for the Court to decide.

The Court: Yes, that part of the question may be expunged. Ask a new question.

Q. At or about the time of the execution of the Thatcher agreement, was this agreement executed between Hartford-Empire Company and yourself?

A. Yes, sir.

(Document shown Court.)

Mr. Middleton: What is the date of that, Mr. Freed?

Mr. Freed: It is the 6th day of December, 1932, Mr. Middleton.

Q. Mr. Underwood, at the time that you had talked about the Kucera feeder, I had neglected to ask you whether or not you had had any negotiations with Hazel-Atlas for the use of the Kucera feeders?

A. Yes, I think there was some exchange of correspondence or interviews, in connection with the Kucera feeder, with Hazel-Atlas Glass Company.

Q. Do you recall with whom those negotiations were had?

A. I believe it was Mr. Algeo, of Washington, Pennsylvania.

[fol. 2952] Q. Mr. Underwood, are you able to tell us who is the largest manufacturer of wide-mouth containers at this time?

A. I should say Hazel-Atlas Glass Company.

Q. Are the Knox Affiliates in competition with Hazel-Atlas?

A. Yes, sir.

Q. Mr. Underwood, will you tell the Court how you set prices on your wide-mouth containers?

A. How Knox?

Q. Knox Affiliates?

A. We establish, of course, our own lists, giving always consideration to the lists that are distributed by the Hazel-Atlas Glass Company, who are in our opinion the leaders in that particular field of the industry.

Q. Who is the largest manufacturer of narrow-neck containers?

A. Owens-Illinois Glass Company.

Q. Are they your competitors in that line of business?

A. Yes, sir.

Q. Will you tell the Court how you set or fixed your prices on narrow-neck containers?

A. We also establish our own lists, always giving consideration, however, to the lists that are established by the Owens-Illinois Glass Company on like kind of ware throughout the industry.

Q. Mr. Underwood, what was the volume of business done by Knox Affiliates in the past year?

A. You mean the dollar volume?

[fol. 2953] Q. Total in dollars.

A. Approximately $10,000,000.

Q. What percentage of the total output of the entire industry does that represent?

A. I should say about seven and one-half per cent.

Q. How much did you pay in the past year in royalties to Hartford-Empire?

A. Approximately $450,000, I should say.

Q. Would that be approximately the amount you had paid over a period of years, the same amount?

A. Our business has expanded from year to year. I should say that last year was one of our large years.

Q. What was the gross profit of your business in the past year, not excluding royalties?

A. Mr. Freed: I don't believe I could give you the gross profit. Our net profit was approximately $350,000.

Q. Mr. Underwood, are you a member of the Glass Container Association?

A. Yes, sir.

Q. How long have you been a member of that Association?

A. Ever since its organization, I presume.

Q. When was it organized, do you recall?

A. No, I do not, Mr. Freed.

Q. Some time ago?

A. Oh, yes, a number of years ago.

Q. Who constitutes the membership of the Association?

A. The manufacturers of glass containers, as well as a number of suppliers to the industry.

[fol. 2954] Q. And are there periodical meetings of the Association?

A. Yes, I think the general membership meets three to four times a year.

Q. Do you hold an office in the Association?

A. I am a director.

Q. How long have you been a director of the Association?

A. For possibly four or five years.

Q. Who are the operating officers of the Association?

A. Mr. C. R. Stevenson is the business manager. He is assisted by Mr. Victor Hall, and a Mr. Kuni. They are the principal operating——

Q. Is Mr. Ackerman connected with the Association?

A. He was previously; he has now resigned and is president of the Thatcher Manufacturing Company.

Q. When did he resign, do you know?

A. I think he resigned the latter part of 1940.

[fol. 2955] Q. Do the members of this association pay dues?

A. Yes, in the form of a percentage on their net sales covering the year preceding.

Q. Was the Association in existence during NRA?

A. Yes.

Q. What functions did it perform during the NRA?

A. Well, substantially the functions that it now performs except that under the NRA there was a Code Committee established and quotas established.

Q. Did the establishment of those quotas continue after the NRA?

A. No. The Committee discontinued establishing any quotas after NRA.

Q. What reports, if any, do you make to the Association?

A. Well, each member reports monthly its production and its shipment.

Q. That is done monthly you say?

A. That is done monthly.

Q. What, if any, service does the Association perform to the members with reference to reports of any kind?

A. These reports are all gathered into the office of the Glass Container Association at New York, and they are compounded and each member receives a report as to the total number of gross manufactured in that respective month in the industry as well as the total number of gross shipped, and in addition to that the report shows his respective production and his respective shipment as they bear to the whole of the industry.

[fol. 2956] Q. Now, during the meetings either of the directors or of the Association was there any discussion as to the purpose or the reason why these various amounts are shown to the members?

A. During any directors' meeting that I have ever attended or any general meeting that I have ever attended, there was discussed only insofar as I know the general gathering of statistics and the dissemination of them.

Q. The particular items contained in those reports were never discussed?

A. That is, you mean one member's activities as against another?

Q. That is right?

A. No.

Q. Were the general activities of the Association discussed with reference to it?

A. Let me have that question again?

Q. Were the general activities or the activities of the Association discussed with reference to those various items contained in these reports?

A. The general discussion in the meetings that I attended, that is the general membership meetings and the directors particularly, and the directors' meetings, what was discussed was the fact that we should continue gathering these statistics and continue the information that our membership thought was necessary to intelligently operate their business. That is I mean in the official directors or general [fol. 2957] meetings.

Q. Now, at either the directors' meetings or at the Association meetings, were there any speeches delivered with

reference to the activities of the various members of the Association as concerned the entire Association?

A. Yes. Our business manager, Mr. C. R. Stevenson, usually at our general membership meetings would address the industry as a whole.

Q. What would he say?

Mr. Day: I object to that. I suppose we are entitled to have time and place fixed.

Mr. Freed: I am going to fix it.

Mr. Day: I think we are entitled to have it fixed before you ask him what he said.

The Court: Objection will be sustained.

Q. Now let's take—when was the last speech that he made?

A. Well, I did not attend the last meeting and I am informed he did not make a speech.

Q. When was the last time that you attended a meeting at which he did make a speech?

A. I think during the spring meeting of—the fall meeting of 1939, or the spring meeting of 1940.

Q. Did he make a speech and discuss the subject matter of the volume of business done by the various members of the Association?

A. He did not discuss at the meetings—he did not refer any speech to any particular company's business, but he has always referred to the necessity of gathering these [fol. 2958] statistics and getting the information separately to each individual company so that they could intelligently see what is going on in this industry.

Q. Now, I am going to hand you Government's Exhibits 600, 601, 602, 603, 604, 605, 606, and 607, inclusive, which purport to be comparative statistics, general line, Exhibit 600 being dated July, 1935, and bears the name Member Knox Glass Associates. Government's Exhibit 601, purporting to be comparative statistics, general line, December, 1936, Member Knox Glass Associates.

602 purporting to be comparative statistics, general line, addressed to Member Knox Glass Associates, dated December, 1937.

Government's Exhibit 603, purporting to be comparative statistics, general line companies, Member Knox Glass Associates, December, 1938.

Government's Exhibit 604, purporting to be comparative statistics, Member Knox Glass Associates, Inc., April, 1939.

Government's Exhibit 605, purporting to be comparative statistics, general line companies, Member Knox Glass Associates, Inc., dated May, 1939.

Government's Exhibit 606, purporting to be comparative statistics, member Knox Glass Associates, Inc., June, 1939. [fol. 2959] Government's Exhibit 607, purporting to be comparative statistics east of Rocky Mountains, Knox Glass Associates, general line, February, 1941.

I am going to ask you to examine these exhibits and tell the Court whether or not those are the reports that were mailed to you periodically by the Glass Containers Association?

A. Yes, sir.

Q. Now looking at Government's Exhibit 600, I see the notation on it "Industry Forecast 1935, 30,236,760 gross". What does that mean?

A. That is the moving year. The industry forecast for the year.

Q. The amount that will be done during that year?

A. No. The forecast of the business available for that year, that was for 1935.

Q. I see under that "Your Forecast July, 1935, 997,813". What does that mean?

A. That would be based upon our melting area as based on the whole of the industry, and as recorded by men of the institute or association who checked up our melting area.

Q. Then I see under that your forecast "3.30 per cent". What would that be?

A. 990,000 as bears to the 30,000,000 would equal 3.30 per cent.

Q. I see three tables here, month of July, year and date, moving year ending, reported tonnage. In the month of July, see the notation "Industry Actual Production [fol. 2960] 2,907,381." What does that mean?

A. That means that was the actual production of the industry for July, 1935.

Q. What does the item under "Your Forecast" mean?

A. That means our proportion of that based on the forecast would be 95,944.

Q. Then it says "Your Actual".

A. We produced 32,586.

Q. More than——?

A. The forecast.

Q. More than the forecast?

A. That is right.

Q. Your forecast per cent to Industry, next item, 3.30 per cent, what does that mean?

A. That means this figure here, and our actual was 4.4.

Q. Your actual per cent of industry——?

A. Was 4.4. That was the actual production we did make.

Q. You exceeded?

A. Yes, we exceeded our forecast by 1.1 per cent.

Q. You exceeded the amount?

A. Yes, by 1.1 per cent.

Q. "The year to date", what does that mean?

A. That would be the six months operation, or seven months operation from January 1st to July 31st would be the year to date, and the moving year is the last twelve months preceding.

Q. Now I notice on Government's Exhibit 601, which is [fol. 2961] December of 1936, the same figures, or rather the same items appear, Industry Forecast 1936, Your Forecast 1936, and your forecast 3.30 per cent?

A. That is right.

Q. Then in the table under it, it shows that actual per cent of industry 5.15?

A. Yes.

Q. Does that mean you exceeded that amount?

A. Over two per cent.

Q. Of your share of the industry by two per cent?

A. By two per cent.

Q. Now, on Government's Exhibit 602 again the same items appear at the top, the industry forecast and your forecast for 1937, your forecast 3.30 per cent?

A. That is right.

Q. Does that 3.30 per cent remain stationary?

A. The figure of 3.30 per cent is the melting area of our furnaces as set up, I think, however, in the code days of NRA for our plant which you see we did not respect.

Q. You did not respect?

A. That is right.

Q. Did anybody talk to you about that that you did not respect it?

A. During the NRA days the Glass Container Association appointed a Code Committee. I think I was asked to appear before that Code Committee on two or three different occasions for the purpose of discussing with them the [fol. 2962] fact that we were exceeding our quota as established by them, to which we did not agree because we thought their method of establishing the quotas was unfair.

Q. Was that the quota set at that time, 3.30 per cent?

A. Approximately.

Q. After the NRA was declared unconstitutional, did anybody talk to you about receiving your quota 3.30 per cent?

A. No. After the Code authorities suspended and retired from activity there was no means of contact. I mean we were not contacted by any particular representative body of the Glass Containers Association with respect to our position from that day on.

Q. Did you discuss with any of the operating heads or operating officials of the Glass Container Association this question of your exceeding the quota?

A. You mean officially?

Q. Officially or unofficially?

A. Well, I don't know hardly how to answer you, Mr. Freed, there, because during the past few years in this industry, particularly the last ten or fifteen years, it appears most any man I meet in the industry discussed with me the situation that we are taking a lot of business—we are taking a lot of business. So it is pretty hard to say. I don't know whether at some point that was discussed or not.

Q. Now did Mr. Stevenson generally talk about that proposition at the meeting?

[fol. 2963] A. No. In our Board meeting or in our general meeting Mr. Stevenson did not refer that to anyone individual member of the Association in his addresses from time to time. He has always, and at least in most cases he has stated that we have spent our money for the purpose of employing him and his associates to gather these statistics, compound them, disseminate them, and there they are, and we are intelligent men, and it is up to us to operate the industry as we wish to operate it. That is about as far as I ever heard Mr. Stevenson say.

Q. Now, on the report of December, 1938, that figure of your forecast, 3.30 per cent, and your actual percentage of the industry, 7.45 per cent, still appears?

A. That is right. It is continuing up.

Q. It is continuing up?

A. Yes.

Q. Now in April of 1939 your percentage is still marked 3.30 per cent?

A. Yes.

Q. And your actual percent to industry is 6.3?

A. Yes, 6.3.

Q. In May of 1939 your forecast and the figure still appears 3.30 per cent and your actual percent to industry is——?

A. 6.12.

Q. In the report of June of 1939 that figure of 3.30 per [fol. 2964] cent still appears up at the top?

A. That is right.

Q. Your actual percent to industry still appears?

A. 6.7.

Q. I see the last one, Exhibit 607, which is February of 1941, those figures don't no longer appear, that is your percentage of 3.30 per cent no longer appears?

Mr. Day: If the Court please, '41 is after the filing of the petition in this case. I don't think we want to object, but if the government goes into it for that period of time we wish the same opportunity to go into it when it comes to our defense.

The Court: You may have it.

Q. It does not appear?

A. No. That was discontinued some time in 1940.

Q. Discontinued some time in 1940?

A. Yes.

Q. When with reference to the TNEC hearing was it discontinued?

Mr. Day: I object to that.

The Court: Sustained.

Q. Was the discontinuance of the showing of that amount discussed at any meeting of the directors of the Glass Containers Association?

A. Yes.

Q. Or at any meeting of the Association?

A. Directors of the Association.

Q. When was it discussed?

[fols. 2965-2966] A. I believe some time early during 1940 the directors voted and at that time authorized the discontinuance of showing that quota on each report that goes out.

Q. Was there a discussion as to why that was authorized at that time?

A. Yes. At the instance of the directors of the Association, counsel was employed to explore very carefully the functions of the Association to determine whether in its opinion we were doing anything unlawfully. After the survey had been made by counsel the Board convened and were advised, if my memory serves me correctly, I sat in the meeting, if my memory serves me correctly, the Board was advised by its counsel in its opinion, that is counsel's opinion, the Association was being conducted along lawful lines. That there might be, however,—we might be, however, in the twilight zone with respect—not definitely stating, but we might be within the twilight zone showing the quota, and I believe the directors authorized the discontinuance of it.

Mr. Day: I believe it is proper to state at that time we were not counsel; that is right, isn't it?

The Witness: That is right.

[fol. 2967] Cross-examination of Mr. Underwood.

By Mr. Goodrich:

Q. You put your first shop together in 1914, Mr. Underwood?

A. Yes, sir.

Q. Now, you are president of a group of seven affiliated [fol. 2968] companies that last year did a $10,000,000 business?

A. Yes.

Q. You started in the glass business even before 1914?

A. You mean as a workman?

Q. Yes.

A. Yes sir.

Q. You learned your glass business on the shop floor?

A. Right.

Q. What were you first, a mold boy?

A. A mold boy, then following through to blower.

Q. Became a glass blower yourself. Now, you are the fourth largest in the business and still going strong?

Mr. Haight: The record doesn't show he said yes.

The Court: The nod will have to get into the record. The answer was in the affirmative.

Mr. Goodrich: If the Court will permit me to comment, I think the personal history of this witness, just given, is an American saga of which we all might be proud. I know of no country in the world today where this could have happened except in these United States.

Q. It wasn't always smooth sailing?

A. No sir.

Q. It was tough sledding a good many times?

A. Yes sir.

Q. You had to look pretty hard for money a good many times?

A. Yes sir.

Q. It was particularly tough, wasn't it, after the crash [fol. 2969] in 1929, through the years '31, '32, '33, '34, and through there?

A. Yes.

Q. You put your business together then?

A. Yes sir.

Q. Adding to your spread-out, probably had to borrow money from time to time to meet payrolls and things?

A. Yes sir.

Q. What was your chief specialty as a glass-blower?

A. I should say the blowing of prescription and proprietary ware.

Q. Then when you organized your own shop in 1914, what was the shop's specialty?

A. Prescription ware and proprietary ware.

Q. Most hand shops had specialties, did they not, specialized on one line of glass or another?

A. To a greater or less extent.

Q. Depending, I suppose, on the skill of the blowers and what they were used to?

A. That is right.

Q. Now, when you started your hand shop you said you had some semi-automatic machines in there, and you described them and named them. Is it not true all those semi-automatic machines required skilled workmen for their use?

A. Yes, they required a gathering boy.

Q. And what does a gathering boy do?

A. By the use of a punty he gathers the glass from the molten body and discharges it into the blank mold of the [fol. 2970] machine.

Q. Then somebody pulls the mold handle and so makes the bottle?

A. Yes sir.

Q. How was the bottle blown in such machine?

A. It was transferred from the blank mold to a blow mold, and by the use of a foot pedal, operated by an assistant, the air was introduced into the parison, and the bottle blown.

Q. How many such machines did you have in your shop at that time?

A. Do you mean——

Q. Let's take in 1914, when you first got it.

A. In 1914 we didn't operate any semi-automatic machines. We didn't install semi-automatic machines in our plant until about 1919. We operated a wholly hand plant.

Q. So for five years you were operating a hand shop, purely and simply?

A. Yes sir.

Q. And in competition with the automatic output of the Owens machine; is that right?

A. Yes sir.

Q. In 1919 you got some two or three semi-automatic machines?

A. Yes sir.

Q. How much help did these machines give you as to comparative output?

A. Well, I should say they increased our production [fol. 2971] probably oh, probably increased our production over hand-blown shops probably 50 to 70 per cent, and reduced our costs probably 20 per cent.

Q. So it was a real help?

A. Yes.

Q. But even so, your production rate was considerably behind that of the Owens machine, was it not?

A. Yes sir.

Q. And did or did not the existence of that fully automatic Owens machine constitute a serious threat to the competitors in the industry?

A. Yes sir.

Q. You felt that yourself, did you?
A. Yes sir.
Q. And what was the prospect for successful survival of hand shops and semi-automatic shops against that competition?
A. Very discouraging.
Q. Looked pretty black, did it?
A. Yes sir.
Q. And were you then looking for some new method——
A. Yes sir.
Q. ——that would keep you in the running?
A. Yes sir.
Q. And the new method came along, didn't it?
A. Yes sir.
Q. And as soon as you could you adopted the new method?
A. Yes sir.
Q. That was the feeder method?
A. Yes sir.
[fol. 2972] Q. And you put in your Miller machines and you built other plants, and your business has grown ever since?
A. That is right, sir.
Q. Now, coming to the Miller Memorial Association—I meant to say—or that is what it was really called, wasn't it?
A. The Miller Feeder Users Association.
Q. You were a member of it?
A. Yes sir.
Q. And Lamb Glass Company was a member of it?
A. Yes sir.
Q. And the membership card, you might say, was a notice of infringement, was it not?
A. Yes sir.
Q. Because all the members had been notified, so far as you knew, that the Miller feeders infringed other feeders, Hartford's particularly?
A. Yes sir.
Q. You agreed to pay expenses for litigation up to $1,000 a machine, did you not?
A. I believe that that was the maximum.
Q. And it cost your company some $21,000, you alone?
A. Yes sir.

Q. Lamb, you said Lamb Glass Company was a member of the association?

A. Yes sir.

Q. And the association defended the suit, Hartford-Empire vs. Lamb Glass Company, did it not?

[fol. 2973] A. Yes sir.

Q. You employed counsel, the association employed counsel?

A. We employed counsel.

Q. Who was it, do you remember?

A. Cooper, Kerr and Dunham of New York.

Q. And the association paid their fees?

A. Yes sir.

Q. And the other expenses of the litigation?

A. Yes sir.

Q. And of course you knew of the decision in that case?

A. That is the Cincinnati decision?

Q. That is right.

A. Yes sir.

Q. Which came down from the District Court, I believe the record shows, in December, 1930, and from the Sixth Circuit Court of Appeals in May of 1932?

A. Yes sir.

Q. And that sustained the phase change claims and other matters?

A. Yes sir.

Q. Now you said this morning, Mr. Underwood, that you had received infringement notices from Hartford in 1924. I wonder if you are not mistaken about that. I show you, very frankly, what I have. I found a series of infringement notices beginning in 1926, and I would like to show you these and see whether you can tell us whether those are what you received from Hartford?

A. (After examining same.) I should say that that is the [fol. 2974] type of notices received. I thought that we received such notices prior to January, 1926.

Q. You didn't receive them all in one batch, did you?

A. No, a series.

Q. You got a notice from Hartford, as something would happen about a particular patent, you received a notice of it?

A. Yes sir.

Q. So that the notices ran along over a period of years, did they not?

A. Yes.

Q. And there never was any doubt in your mind but Hartford was claiming you infringed their patents?

A. There was no doubt whatsoever but what they were claiming.

Q. That is what I said, "claiming". That is true as to the Miller feeder and the O'Neill feeder and the Knox-O'Neill machine as well?

A. You have reference to the Miller feeder and the O'Neill feeder?

Q. Yes.

A. In the two instances with respect to the two feeders, I should say "yes". As to the Knox-O'Neill, that would be questionable, for a while at least, in my mind.

Q. Well, that came along later?

A. Yes, came along later.

Q. Let's put it this way: from the beginning of your development of the Knox-O'Neill suction machine—or the [fol. 2975] "OSM" we call it—is that what you call it?

A. Yes.

Q. From the beginning of that development, at least, when it became publicly known you were working on the machine, you knew from the first Hartford claimed that development infringed some of its patents, didn't you?

A. No, I wouldn't say so, not from the very first.

Q. But after you put it out there was no doubt about it?

A. Soon after we put it out.

Q. Now, while you were carrying on the fight over the Miller feeders, and you yourself building up your business, you, as you testified this morning, were trying to develop this Knox-O'Neill suction machine. Mr. O'Neill was an old machine man, wasn't he?

A. Yes.

Q. You had high hopes for your own development, didn't you?

A. Yes sir.

Q. Both mechanical and financial?

A. Yes sir.

Q. You thought you had a new method that would short-cut and save a lot of money and really be a great success, did you not?

A. Yes sir.

Q. And you hoped, of course, that was true; but it wasn't so, was it? Mechanical defects developed that made the feeder fall short, or made the machine fall short in your expectations, did they not?

A. No, I shouldn't answer that way. I would prefer to [fol. 2976] answer your question by stating that in my opinion the failure of the machine to operate more successfully was due to the fact Mr. Frank O'Neill did not support it with the proper engineering service.

Q. In other words, didn't bring it to the complete point of development that you thought it might have eventually reached?

A. That is right.

Q. And, financially, it was a disappointment too, was it not?

A. To whom?

Q. To you and Mr. O'Neill.

A. I don't think it was a disappointment to Mr. O'Neill.

Q. Perhaps not, but it was to you?

A. Yes, I would say so, to us.

Q. You had rather a heavy commitment with Mr. O'Neill, and you had hoped to receive quite a substantial selling price for the development?

A. Yes sir.

Q. Now, you gave a demonstration of that machine late in December, 1928, at Knox, did you not? Do you recall that Mr. Kimes was there to write an article for the Glass Budget about the operation of the machine?

A. We gave a brief demonstration in the latter part of 1928, and I believe the stationary-pot demonstration, to which the industry was more attracted, was during the spring of 1929, and I think Mr. Kimes at that time was there.

Q. Well, I could refresh your recollection on that. I [fol. 2977] think it was the last week in December and he got his article right out. At one time you had Mr. Kimes, and other people, in to see that demonstration?

A. Yes sir.

Q. And I believe you will find it was the same week when you found Mr. Soubier in your plant, as you testified this morning, and it seemed a bit odd that the small boy went under the tent when the passes were given out at the front door.

A. Yes sir.

Q. You say you sold 12 or 15 of those machines?

A. Yes sir.

Q. How many of them are still in use, do you know?

A. I think, to the best of my knowledge, there is only one of the machines now in use, and that is at our Oil City plant, except that I understand a new company has been recently formed at Paden City, W. Va., and contemplates operating one or two of those machines.

Q. Now, some of the exhibits, I don't remember the numbers, introduced by the government, indicated that you had, when this machine was first announced, a flood of orders, you expected to build a great many machines, and I think they amounted to some fifty or sixty orders that had been taken?

A. Yes.

Q. But of that group of orders you never built any more than the 12 or 15, you stated this morning?

A. Yes sir.

Q. You had hoped to make a profit on the sale of the [fol. 2978] machines outright, had you not?

A. Yes sir.

Q. Do you remember what it was to cost to build it, about?

A. If I remember correctly, the one model was quoted at $16,000.

Q. That is the selling price?

A. Yes. And the cost to the Knox-O'Neill was $12,000.

Q. That is a larger model?

A. No, that is the smaller model. The larger model, I believe, was quoted at $21,000, and the cost to Knox-O'Neill from the O'Neill Machine Company for building the machine, I believe, was seventeen or eighteen thousand dollars.

Q. I suggest to you that the cost that you and Mr. O'Neill figured, that the cost of the machine would be $6,000, and that you would sell it for $16,000?

A. Yes.

Q. And have a profit of $10,000 per machine; is that correct?

A. That is right; that is what was contemplated.

Q. And a little larger profit on the larger machine,—I have forgotten the exact figures?

A. Yes, I think so.

Q. You said this morning that one of the reasons you hesitated in taking a Hartford license or giving up the OSM machine, was that you were afraid the license would not be available to you from Hartford. Don't you remem-
[fol. 2979] ber Hartford always wanted to license you?

A. No, I cannot say that I was wholly relieved in that respect, because I was informed, indirectly, not directly by Hartford, but indirectly by sources that I thought knew something about it, that it might be questionable as to whether we could obtain a license, even though we were willing to pay royalties.

Q. But you would not deny that it did, on various occasions, attempt to get you to take a license?

A. I would say Hartford, in their contact with me, written or verbal, wanted me to come to Hartford or meet them at some convenient place to discuss the situation.

Q. You had, of course, a great many meetings with the Hartford representatives in connection with the proposed sale to Hartford of the Knox-O'Neill machine?

A. Yes sir.

Q. And do you remember the three fundamental reasons on which Hartford based its final refusal, outside of the price?

A. As set forth by Herbert Knox Smith?

Q. Well, as told to you in the conferences or as set forth to you?

A. Well, I don't recall now.

Q. Well, can you remember that it was suggested to you that the Hartford representatives were afraid that the Knox-O'Neill machines infringed certain patents of theirs and others; do you remember talk about that?

A. Yes, I recall it.

[fol. 2980] Q. And that was given as one of the reasons for Hartford's reluctance in the matter, was it not?

A. Well, I cannot say that that would be one of the reasons with respect to Hartford's infringement.

Q. I mean as to the machine's infringement?

A. Yes, as to the machine's infringement of Hartford's patents.

Q. The answer is you don't remember that specifically?

A. Yes, sir.

Q. Do you remember another reason advanced was that Hartford feared this machine could not be adequately protected by patent, if Hartford should buy it?

A. I believe that was the opinion Herbert Knox Smith gave to me.

Q. Do you recall another reason was that the Hartford representatives feared that the machine could not be made mechanically or commercially successful?

A. I don't recall.

Q. It has been a long time ago, hasn't it?

A. Yes.

Q. But as you said, after the machine was publicly announced, you had at that time or very shortly after that time, knowledge that Hartford was claiming infringement by you and by Knox-O'Neill?

A. Yes sir.

Q. Now, let's go to your license which you took on August 25, 1932. The exclusions and fields of ware were pretty much a matter of bargaining between you and Mr. Smith, [fol. 2981] or rather between you and Hartford, were they not?

A. Yes.

Q. You had never made any beverages to any extent?

A. No, sir.

Q. Just for this one customer?

A. Right, sir.

Q. And you got that. Further beverage rights were granted you on September 1, 1936, were they not: do you recall?

A. What day?

Q. September 1, 1936.

A. What rights were granted?

Q. Beverage rights?

A. I don't recall how broad those rights were.

Q. Well, there is no use bothering you with it. The record will show. We will relieve you of that. Do you remember a further enlargement of rights on January 16, 1940?

A. Yes sir.

Q. That one you do remember. You have been wide open up there since October 7, 1938, as to the number of feeders, haven't you?

A. '38? As to the number of feeders?

Q. Yes.

A. No, I don't think we have been.

Q. You don't remember that, either?

A. No.

Q. Whatever the correspondence shows will govern?

[fol. 2982] A. Yes.

Q. And you have had no restrictions of any sort since October 8, 1940?

A. That is right.

Q. When you went up to get your license, you testified that the infringement damages had been computed at $630,000 or thereabouts?

A. Yes sir.

Q. Who made that computation?

A. We made it in our own accounting department.

Q. You made it yourself. You settled that bill for how much?

A. $100,000.

Q. So you haven't any complaint about that, have you?

A. Well, it might have been a fair deal.

Q. And as a metter of fact you got a lot more than that out of it, didn't you,—for you got $100,000 allowance for the Kucera feeder rights, did you not, against that infringement damage?

A. No sir.

Q. I thought Hartford gave you credit for $100,000 in that way, and paid Mr. Kucera $45,000 as well?

A. For the cancelling of the Kucera feeder. I don't know how Hartford treated it, as a matter of accounting, but if my memory serves me correctly, I simply placed before Mr. Smith a proposition whereby we would pay them $100,000 and take the license and cancel our license with Mr. Kucera. That was our end, and in turn he settled with Mr. Kucera.

[fol. 2983] Q. You turned over your rights under Kucera's feeders?

A. That is right.

Q. You don't now remember that the final bill was $200,000?

A. I don't recall discussing or writing into the agreement such feature.

Q. But it might have been so?

A. It might have been so.

Q. So far as your memory serves you now?

A. Yes.

Q. At any rate, you did turn over your Kucera rights?

A. That is right.

Q. You said you had the Kucera feeder set up, one feeder set up in one of your plants. Are you still operating it?

A. No.

Q. Do you know anyone else who is operating a Kucera feeder?

A. I am not sure, but I think a Kucera feeder is being operated by the F. E. Reed Glass Company of Rochester, N. Y.

Q. You could buy one, if you wished to, could you not?

A. From Hartford?

Q. Yes.

A. Yes sir.

Q. Never wanted to, never ordered one?

A. No sir.

Q. You have, of course, since your license, bought more Miller machines, have you not?

A. Yes sir.

Q. Who makes those for you, from whom do you buy them?

[fol. 2984] A. We buy the parts from Swissvale, a company succeeding the Miller Engineering Company, I believe now it is operated by the Swissvale Machinery Company possibly.

Q. Up in Pennsylvania?

A. Yes, sir.

Q. So you just order from them when you want them?

A. Yes, sir.

Q. Mr. Freed asked you this morning if Hartford had ever refused you a license to set up a plant on the West Coast. Did you ever ask for one?

A. Not to the best of my recollection.

Q. On the contrary, you have obtained from Hartford, licenses for several other plants since you first took your license, have you not?

A. Yes, sir, we received permission from Hartford to transfer a number of feeders to Jackson, Mississippi, and to Jersey City, N. J.

Q. Now, one of the first things that happened after you took your license, Mr. Underwood, was that Hartford sent some engineers up to go through your plants, inspect them,

and make reports to you and suggestions as to what could be done to improve operating conditions and to save money; isn't that true?

A. I don't recall the instance now, but I should imagine they would do that.

Q. Well, you would not deny that inspection was made of the Knox plant in September of '32, and of the Wightman plant about the same time, the Oil City plant that [fol. 2985] same month, the Knox-Jackson plant in 1933, and do you remember getting some help on a tank matter from them in 1934, and some advice on some chutes, and that sort of thing, in 1934?

A. I don't remember the specific instances you refer to, but I would say Hartford has never refused to render any service that we have requested of them, whether it be an inspection of the plant or furnace.

Q. And the fact is you have called on them from time to time?

A. We have, but not to as great an extent, I presume, as they would want us to, or that other manufacturers do.

Q. But all you need, all you want them to do?

A. All we want.

Q. And you find them always ready to help you?

A. Ready to assist.

Mr. Goodrich: That is all I have, Your Honor.

The Court: Any further cross-examination?

Cross-examination.

By Mr. Wood.

Q. Mr. Underwood, I don't remember whether you testified that you put in the Miller feeders in 1922 or 1923. Can you tell me which year?

A. I believe it was 1923.

Q. What part of the year?

A. Probably about the middle of the year, I should think; I don't recall distinctly.

Q. Now, at that particular time was there any question of patent infringement discussed with Mr. Miller?

[fol. 2986] A. I don't believe I can answer that question, Mr. Wood.

Q. Do you remember whether or not there were any clauses in the Miller contract that had to do with the possibilities of patent infringement?

A. Yes, Section 12 of the agreement covered each particular feeder we purchased from the Miller Engineering Company, and set forth a very definite defense position on the part of Mr. Miller or the Miller Engineering Company.

Q. Does the existence of that clause refresh your recollection in respect to whether or not there was any discussion at the time of the possibilities of patent infringement?

A. It would be quite possible that there would be, that there was a discussion. I couldn't say that it was actually discussed but I should imagine that that would be a point to be considered in the purchasing of the machine.

Q. Well, did you know at the time that there was any controversy over patent rights going on in the industry?

A. Yes, I should say so. We were apprised of the conditions as they were being developed in the industry from time to time.

Q. What were those conditions in 1923, if you remember that?

A. I couldn't tell you, except as to what developments I knew of. I believe the Howard feeder was being developed, and a few other feeding devices, but to recall distinctly the balance of the situation the latter part of 1922 or '23 when we purchased these feeders, I couldn't tell you at this [fol. 2987] time.

Q. Did you know at that time there was a number of feeders on the market, and that patent controversy existed between various companies?

A. To be frank with you, Mr. Wood, I don't believe that our company explored that to any great extent. I am sure we didn't employ counsel for that purpose.

Q. Now, can you recall a little bit more accurately just when the Miller Defense Group was organized?

A. The latter part of 1926, I believe.

Q. '26 or '25?

A. I think '26. I think that the Miller Feeders Users Organization was first organized sometime during 1926, I believe September.

Q. Do you remember that there was a suit brought by the Hartford-Empire Company against the Lamb Glass Company of Mount Vernon, Ohio?

A. Yes.

Q. Now, can you recall whether or not the Miller Defense Group was organized before or after the filing of that Lamb suit?

A. Well, the Miller Defense Group I believe followed something like Topsy grew; I don't know whether it all happened at one time. And with your permission, I will state that after we learned that Miller had lost to Hartford, Mr. Fred Reed and myself contacted, separate and apart from any other Miller users, Mr. Lawrence, in Pittsburgh, requesting him to take our case and defend it, [fol. 2988] but Mr. Lawrence was somewhat slow in handling the situation for Mr. Reed and myself, and we then joined hands with Mr. Edward Glacken of the Atlantic Bottle Company, and it appears to me from that time on, members just united with the Miller Feeders' Organization, and I don't know how long it required to build up the total membership of fifteen companies.

Q. There were fifteen companies at the most?

A. Fifteen companies I think is the most that I can recall. And they represented 67 Miller feeders.

Q. And what did those companies have in common?

A. This Miller contract.

Q. And they were all users of the Miller feeder?

A. Under the Miller contract.

Q. Now, what was the organization of the Miller Defense Group?

A. The organization was simple, that is, I believe it was unincorporated, and Mr. Glacken was elected chairman; Mr. E. E. Slick, secretary; Carl P. Sloan, of Jeanette Glass Company, treasurer; and Mr. F. E. Reed of the Reed Glass Company and myself members of the executive committee; and we, together with the three officers named, constituted the executive committee. That is about all there was to that organization.

[fol. 2989] Q. You were a member of the Executive Committee of the Miller Defense Group?

A. Yes, sir.

Q. What was the purpose of the Miller Defense Group?

A. The purpose of the Miller Defense Group, if I recall correctly, was, first, to have a very definite understanding with Mr. William J. Miller as to why he sold his business without conferring and consulting with his licensees.

Q. Was it the purpose of the Miller Defense Group to defend any lawsuit?

A. That followed.

Q. Did the Miller Defense Group defend the lawsuit?

A. I believe that the Miller users defense organization defended; that is, I mean they assumed the expense of defense of the Lamb suit, if I remember correctly.

Q. When you selected counsel to defend the Lamb case, did you endeavor to obtain the best possible counsel?

A. Yes, sir.

Q. Without regard to expense?

A. I should say so.

Q. You chose Mr. Drury Cooper of New York?

A. Yes, sir.

Q. And he and his associate, Mr. Allan Bakewell, worked on the Lamb case and defended it?

A. Yes, sir.

Q. There were five patents involved in that case, were [fol. 2990] there not?

A. Yes; but I recall only the patent which is known as the phase change patent.

Q. What do you recall about that patent?

A. I recall that was the patent I was particularly interested in.

Q. Why were you particularly interested in it?

A. Because, after exploring the situation, and after Miller had sold out, I appreciated that we were in not only the glass feeding business, but we would probably be in the patent and legal business before long.

Q. What was the significance of the phase change patent?

A. At least in my opinion, the other patents reading on the feeder did not give me so much concern, I presume because I thought we could build around them; the phase change did.

Q. You did not think you could build around it?

A. I would not say I did not think so. I knew it was very vital to a successful operation, although it could be operated without it.

Q. But you considered it vital to a successful operation at the time?

A. Yes, sir.

Q. Did the various members of the Executive Committee of the Miller Defense Group meet with Mr. Cooper or Mr. Bakewell from time to time?

A. Yes, sir.

Q. In regard to the progress of the Lamb suit?

[fol. 2991] A. Yes, sir.

Q. That is, conferred with both of them with respect to decisions to be made and things to be done?

A. That is right, sir.

Q. Do you know whether or not during any of those conferences you were shown a copy of the 1924 Owens-Hartford agreement?

A. No, I don't recall that; in fact, I am pretty certain it was not referred to me.

Q. You did not see it personally?

A. No, sir.

Q. What was the result of the Lamb suit?

A. It is my understanding that the patent, that is, the phase change patent in question, was held valid, operating as it was intended to be operated.

Q. And that the Lamb feeders infringed the phase change patent?

A. Operated as Lamb had intended at least to operate them without changing an operation. I believe that Lamb made some changes in their timing devices to avoid the issue.

Mr. Wood: Just a minute. I move that the latter be stricken out—"I believe"—from that point on.

Mr. Freed: He asked the question, if the Court please. Let the witness answer it.

Mr. Wood: No. Starting with, "I believe that", goes to hearsay and something happening afterwards.

The Court: As he has answered, that may go out, yes. "I believe that"—it may be stricken from there on.

Q. Do you know when that decision came down? It was [fol. 2992] in May, 1932, was it not, the Lamb Glass case decision?

A. I don't recall, Mr. Wood, but I imagine some time there.

Q. Before going to Hartford in the summer of 1932, did you consult with counsel?

A. With respect to going to Hartford?

Q. Yes.

A. Not specifically.

Q. Did you consult with Hartford with respect to the meaning and significance of the decision of the Sixth Circuit Court of Appeals in the Lamb case?

A. No, I did not, because it did not interest me a great deal.

Mr. Isseks: The question was, did you consult with Hartford.

Mr. Wood: No, I did not say with Hartford, I said with counsel.

Mr. Isseks: Yes, you did.

Mr. Wood: I beg your pardon. It is my mistake.

Q. Before going to Hartford in the summer of 1932, did you consult with your own counsel before going?

A. No, sir.

Q. Did you consult with Mr. Cooper?

A. Not with respect to Hartford and our particular situation.

Q. Did you consult with Mr. Cooper or Mr. Bakewell in respect to the meaning or significance of the decision of the Sixth Circuit Court of Appeals in the Lamb case?

A. Yes, I did.

Mr. Wood: That is all.

[fol. 2993] The Court: Any further cross-examination?

Mr. McCallister: Yes, I should like to ask a few questions.

Cross-examination.

By Mr. McCallister:

Mr. McCallister: I would like to have marked for identification a letter of October 16, 1940, addressed to Mr. Roy R. Underwood, by F. C. Ball. That is Defendant's Exhibit B-5035.

I would also like to have marked for identification a letter from Mr. R. R. Underwood, to Mr. F. C. Ball, dated October 21, 1940.

Mr. Isseks: There is no question about the genuineness of either document.

The Court: No disposition to contest their admission?

Mr. Isseks: No question about the genuineness of either document.

Mr. McCallister: I had not offered them, as yet.

The Court: I see.

Q. I show you a copy of a letter which has just been marked for identification as Exhibit B-5035——

The Witness: Yes.

Q. You identify that as a letter you received——

Mr. Freed: We stipulate the answer, Mr. McCallister, that he wrote the letter.

Mr. McCallister: I should like to ask him just the same.

Q. I show you a letter, the original of a letter, a copy [fol. 2994] of which has just been marked Exhibit B-5036, and ask you if it is your letter?

A. Yes, sir.

Mr. McCallister: I offer both letters, Your Honor.

The Court: They may be admitted.

Q. Mr. Underwood, during your testimony this morning, and in connection with Government's Exhibits, I believe they were Numbers 600 to 607, you used the term "melting area". By that did you mean melting capacity?

A. Yes, sir.

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[fol. 2995] Cross-examination.

By Mr. Day:

Q. Mr. Underwood, this morning you identified certain documents, marked "Comparative Statistics": Exhibits Nos. 600 to 606, inclusive, and one, 607. I want to call your attention to the first one: July, 1935, Exhibit No. 600. It says:

| | |
|---|---|
| "Industry Forecast 1935..... | 30,236,760 |
| Your Forecast 1935..... | 997,813 |
| Your Forecast %..... | 3.30%" |

Do you know that those figures that I have just read are the same on each one of these exhibits from 600 to 606?

A. You mean 3.3?

Q. No, the 30,236,760 and 997,813.

A. That is right; it would be, for the year.

Q. This first is of July, 1935, is it not?

A. Yes, sir.

Q. The next one is December, 1936?

A. Yes, sir.

Q. The next one is December, 1937?
A. Yes, sir.
Q. The next one is December, 1938?
A. Yes, sir.
Q. The next one is April, 1939?
A. Yes, sir.
Q. The next, May, 1939?
A. Yes, sir.
[fol. 2996] Q. And June, 1939?
A. Yes, sir.
Q. And your forecast of 3.30 per cent stays the same, does it not?
A. That is right.
Q. Do you know whether or not the forecast part of this comparative statistical statement originated in the NRA, about 1934? I notice the first statement here is July, 1935. That is the reason I asked you.
A. I could not answer that definitely. It might be it originated in 1934 by the Code Committee.
Q. And of course the Code went out of effect about May, 1935, when the Supreme Court of the United States decided the Schechter case?
A. That is right.
Q. I may have the date incorrectly, but I think that is about right. Turning to Exhibit No. 600, it says for the month of July, 1935, Your Forecast 95,000 plus; Your Actual, 128,000 plus?
A. That is right.
Q. "Year to date—Your Forecast 617,000 plus—Your Actual, 754,000 plus;" and, "Moving Year Ending July 31st, 1935, Your Forecast 1,044,000 plus; Your Actual 1,231,000 plus." So your Actual was above your Forecast, was it not?
A. Yes, sir.
Q. Without taking the time to go through all of these, it is a fact, is it not, that your Actual was above your Fore-
[fol. 2997] cast at each one of these statements?
A. Consistently, sir.
Q. All of the way through?
A. Yes, sir.
Q. You testified this morning there came a time when the Association discontinued any statement in its Comparative Statistics statement having your forecast and your forecast percentage in it?
A. Yes, sir.

Q. I think you said that was some time about 1940?
A. I thought it was early in 1940.
Q. It might have been before the TNEC hearing in 1938?
A. It might have been before, but I thought it was early in 1940; and I believe it is a matter of record. I think the directors ordered that to discontinue.

Mr. Freed: The hearings were in December, 1938, as I understand it.
Mr. Isseks: That is right, sir.

Q. Is it not a fact—maybe you do not remember about it—that your forecast and your forecast percentage items were omitted some time in the summer of 1939; perhaps about July, 1939?
A. Maybe that is so.

Mr. Day: Of course, we can verify that.
Mr. Isseks: Whatever the record shows will be perfectly satisfactory to us.
Mr. Day: I will look it up; but if it was in July, 1939, that [fol. 2998] was before this suit we are trying now, was it not?
Mr. Isseks: The suit was filed December 13, 1939, by stipulation.

Q. And for some time the Comparative Statistics statement form which was being sent out to the members of the Association was similar to this No. 607, was it not?
A. Yes, sir. I think that is the form now.

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Thereupon, the government called as a witness, HENRY W. CARTER, who, being duly sworn, testified:

Direct examination.

By Mr. Isseks:

Q. Mr. Carter, you are connected now in some capacity with the Owens-Illinois Glass Company?
A. I am not on their payroll; I am on a retainer.
Q. An annual retainer?
A. My checks come in as a monthly retainer.
Q. Not on an employment basis, but on a legal retainer basis?
A. Yes, sir.

Q. They pay you on an annual basis, but give you a [fol. 2999] monthly check?

A. Yes, sir.

Q. How long have you been connected with Owens in that capacity?

A. I believe since 1933.

Q. You are a member of the Ohio Bar, I assume?

A. It might have been 1934.

Q. The year is immaterial, 1933 or 1934. You are a lawyer, are you not?

A. Yes, sir.

Q. Prior to 1933 or 1934, when you went on the annual retainer basis, were you connected with the Owens Company in any other capacity?

A. I was vice-president.

Q. How long were you connected with Owens in any capacity prior to 1933 or 1934, approximately?

A. I think I was retained by them about 1910, and, again in about 1918; perhaps some time in between, in specific litigations.

Q. When did you go on the payroll on a salary basis?

A. October 1st, 1920.

Q. In what capacity, sir?

A. As a patent adviser and attorney.

Q. A time came when you became an officer of the company, did you not?

A. I think that was in February, 1926. I became treasurer.

Q. And then a time came when you became vice-president?

A. I was treasurer until the consolidation with the Illi- [fol. 3000] nois Glass Company. There was one year in there in which I was not an officer; then I was vice-president, I think, for three years.

Q. Prior to the time you severed your connection?

A. Yes, sir.

Q. From the period 1920; I think you said January 1st, 1920?

A. October 1st, 1920.

Q. October 1st, 1920—excuse me, sir—until some period in 1926, you were in charge of the Patent Division, were you not?

A. Yes, sir.

Q. Paid on an annual salary basis?

A. Yes, sir.

Q. When you became treasurer and vice-president, you still continued in charge of that division of the business?

A. Yes. Perhaps I should correct myself by saying previously to 1926, when I became treasurer, the treasurer of the company then was Mr. Baker, who was nominally in charge of the Patent Division; and on financial matters, was directly in charge.

Q. In October, 1920, when you became employed on an annual salary basis with the company, the head of the company was who, if you remember?

A. The managerial head of the company was J. C. Blair.

Q. He was an executive vice-president, was he not?

A. He was general manager and a vice-president.

Q. Mr. Biggers was employed as vice-president, was he not?

[fol. 3001] A. He was an officer of the company. I don't know exactly at that particular time he was.

Q. The president of the company was Mr. Michael Owens, was he not?

A. No, I don't think Mr. Owens was ever president. He was vice-president. Mr. Libbey, I think, was president.

Mr. Isseks: At this time I should like to have marked as Government's Exhibit 608, a photostat of an original memorandum on the letterhead of the Owens Bottle Company, dated February 21, 1922, addressed to Mr. Biggers, and signed by the witness. It is stipulated by Owens-Illinois as to genuineness at page 2 of the Stipulation.

The Court: That is No. 608?

Mr. Isseks: Yes, Your Honor.

[fol. 3002] The Court: What do you say it is?

Mr. Isseks: It is dated February 21, 1922, addressed to Mr. Biggers, on the stationery of the Owens Bottle Company, intra-company correspondence, signed by the witness, stipulated as to genuineness by Owens.

Q. I will ask the witness whether that is his signature on the photostat?

A. It is, yes.

Mr. Isseks: I offer it in evidence, Your Honor.

The Court: It may be admitted, over objection.

Thereupon Government's Exhibit No. 608 was read to the Court by Mr. Kramer, of counsel for the government.

Q. You heard that read, Mr. Carter, did you not?
A. Yes, sir.
Q. And you wrote it?
A. Yes, sir.

Mr. Isseks: Now at this time, Your Honor, I offer in evidence a memorandum dated April 25, 1922, on the stationery of Owens Bottle Company, intra-company correspondence, addressed to Mr. J. C. Blair, subject, "Comments on H. F. Memorandum of April 21, 1922", four pages, purports to be signed by the witness. We have a carbon copy here. It is stipulated by Owens-Illinois as to genuineness on page 2 of the Stipulation, and I offer it as Government's Exhibit 609.

[fol. 3003] The Court: It may be admitted, over objection.

Thereupon, Government's Exhibit 609 was read to the Court by Mr. Lewis, of counsel for the government.

The Court: You may suspend at that point.

(Recess 15 minutes.)

Q. Mr. Carter, you were reading a copy of Exhibit 609, were you not?
A. Yes.
Q. And you wrote it, did you not?
A. Yes.

Mr. Isseks: Your Honor, I call your Honor's attention to Government's Exhibit 35, which is an unsigned memorandum dated 4/21/22, to Section 5 of that memorandum on page 5. I am referring to Government's Exhibit 35, to the second sentence, the following, "In principle H. F. is to be the gob feed concern and Owens the suction concern". I direct Your Honor's attention that Section is quoted in the second paragraph of Government's Exhibit 609, which was just read.

At this time I would like to offer in evidence as Government's Exhibit 610 a letter dated May 3rd, 1923, addressed to Mr. J. C. Blair, Ritz-Carleton, New York City, purporting to be signed Henry W. Carter, stipulated as to genuineness by Owens-Illinois at page 4 of the Stipulation.

The Court: It may be admitted, over objection.

[fol. 3004] Thereupon, Government's Exhibit No. 610 was read to the Court by Mr. McCracken, of counsel for the government.

Q. Counsel for Hartford has asked me to inquire from you whether the suit you refer to in that letter was a suit on Hartford's Hitchcock patent?

A. I don't know. I don't remember.

Mr. Isseks: I told counsel I did not want to ask him any questions. I prefer not to ask him any questions.

Q. You wrote that letter, did you not, sir?

A. I have no doubt that I did.

Mr. Isseks: At this time I would like to offer in evidence a memorandum which is entitled on the top Carter Memo as to O-B policy feeder litigation, dated November 7, 1923, purporting to be signed by the witness and stipulated by Owens-Illinois as genuine at page 5 of the stipulation, as Government's Exhibit 611.

The Court: Dated November 7, 1923?

Mr. Isseks: Yes, Your Honor, November 7, 1923, in the lower left hand corner. I am showing the witness a copy so he can read it as it goes along, if Your Honor admits it in evidence.

The Court: Is there a stipulation?

Mr. Isseks: Yes. It is stipulated by Owens-Illinois Glass Company at page 5 of the Stipulation.

The Court: It may be admitted, over objection.

(Mr. Kramer reads Government's Exhibit 611.)

[fol. 3005] Q. You were reading the memorandum as my associate was reading it out loud, were you not?

A. Yes, sir.

Q. And you wrote it?

A. I have no doubt that I wrote it.

Mr Isseks: Now, at this time I would like to offer in evidence as Government's Exhibit 612, a letter dated August 14, 1923, addressed to J. C. Blair, Hotel Claridge, London, England, apparently signed by the witness; in the lower left-hand corner, at the end of the letter, on page 7, are initials "HWC-D", and at the end of the postscript are the initials "HWC", and stipulated by Hartford-Empire Company as coming from its files, at page 4 of the Hartford-Empire stipulation; and I offer that document in evidence. There is a notation on the photostat, in the upper right-hand corner, "6-11-31 from Mr. Carter". I don't know in whose handwriting it is. My associates told me several

months ago we asked counsel for Owens whether they were able to find either the original or the Owens' carbon copy, and Mr. Middleton advised them, after a search they were unable to do so.

Mr. Middleton: I am not disposed to question the authenticity of it, but I wanted to locate it before we proceeded so I would be able to follow it.

The Court: It may be admitted, over objection.

Mr. Isseks: I hand the witness a copy so he can follow while my associate is reading it.

[fol. 3006] (Government's Exhibit 612 read by Mr. Lewis.)

At the end of the third to the last page, when the date was read as "1922", the following occurred:

Mr. Isseks: 1928. I will show it to the witness and see if he can decipher it.

The Witness: (After examining same.) It looks like '28.

Mr. Haight: The letter was written in '23.

Mr. Isseks: Well, I don't know.

(Remainder of letter read by Mr. Lewis.)

Mr. Isseks: The P. S. is a personal matter, I believe there is no necessity of reading it.

Q. Mr. Carter, you read that while my associate was reading it, did you not?

A. Yes.

Q. You wrote that letter, did you not?

A. I have no doubt that I did.

Q. Finally, forming machines were part of the April 9, 1924, contract, were they not?

A. Yes.

Mr. Isseks: At this time I would like to have marked as Government's Exhibit 613, a carbon copy of an original memorandum dated January 28, 1924, addressed to Mr. J. C. Blair, and purportedly signed by the witness.

This, Your Honor, has been stipulated as to genuineness by Owens Company at page 6 of the stipulation. I offer it in evidence.

The Court: It may be admitted, over objection.

[fol. 3007] Mr. Isseks: I would like to have it read.

(Mr. McCracken thereupon read Government's Exhibit 613.)

[fol. 3008] Q. You wrote that letter, did you not, Government's Exhibit 613?

A. I have no doubt that I did.

Q. Who is Mr. Milans?

A. He was one of our attorneys in Washington. He died some years ago.

Q. Hartford or Owens?

A. Owens.

Mr. Isseks: At this time I offer as Government's Exhibit 614, memorandum dated September 2, 1925, headed: "Owens and Hartford Inventions outside of licensed inventions", signed R. D. Brown, J. F. Rule, stipulated as to genuineness by Owens-Illinois at page 10 of the stipulation.

I will ask the witness one question before I make the final offer.

Q. Who is Mr. Rule?

A. He was a patent solicitor in our employ.

Q. And Mr. Brown, sitting at counsel table, was one of the patent attorneys for Hartford?

A. Yes.

Mr. Isseks: I offer it in evidence, Your Honor.

The Court: It may be admitted over objection.

(Mr. Kramer reads Exhibit 614.)

Mr. Isseks: Your Honor, at this time we offer in evidence, as Government's Exhibit 615, photostatic copy of original letter on the stationery of the Owens Bottle Company, dated July 2, 1926, addressed to Mr. F. Goodwin — vice-president. [fol. 3009] The salutation is, "My dear Mr. Smith". Signed by the witness and stipulated as to genuineness by Hartford-Empire Company at page 13 of the stipulation.

Q. I will ask the witness whether that is his signature at the end thereof?

A. It is; yes.

The Court: It may be admitted, over objection.

Mr. Isseks: Before I have this read I would like to call Your Honor's attention to Government's Exhibit 249, letter dated June 28, 1926, addressed to the witness by F. Goodwin Smith, and to which this letter, Government's Exhibit 615, is apparently the reply. In that connection I would direct

Your Honor's attention to the second and third paragraphs of Government's Exhibit 249.

(Mr. Isseks reads the second and third paragraphs of Government's Exhibit 249.)

(Government's Exhibit 615 read by Mr. Lewis.)

Q. You wrote that letter, did you not, Mr. Carter?

A. I have no doubt that I did.

Mr. Isseks. At this time I would like to have marked as Government's Exhibit 616, photostatic copy of intra-office memorandum on the stationery of the Owens Bottle Company, dated May 21, 1924, addressed to Mr. H. H. Baker, subject, Feeder litigation policy,—signed by the witness, and to which there is attached a two-page memorandum of the same date, May 21, 1924, entitled: "Carter memo on policy as to suspended gob interference", purportedly [fol. 3010] signed typewritten by the witness, stipulated as to genuineness by Owens at page 6 of the stipulation.

Mr. Middleton: Just two pages?

Mr. Isseks: Two pages of memorandum and then there are two pages of attached memorandum which have on top of it: "Carter memo on policy". They are both the same date.

Q. I will ask the witness first if that is your signature on the first one, the first two pages; is that your signature, sir?

A. Yes.

Mr. Isseks: I offer both documents as Exhibit 616.

The Court: It may be admitted, over objection.

(Mr. McCracken reads Exhibit 616.)

Q. You wrote a letter, did you not, dated May 21, 1924, and addressed to Mr. Baker?

A. I have no doubt but what I did.

Q. And you wrote the attached memorandum?

A. Yes.

Mr. Isseks: Perhaps the Court will want to suspend now. The next document will be rather lengthy.

The Court: The bailiff may recess court until 10 o'clock tomorrow morning.

(Night Adjournment.)

[fol. 3011] (At 10 o'clock a. m., Thursday, April 3, 1941, the trial was resumed.)

Henry W. Carter, resuming the stand for further direct examination.

Mr. Isseks: Your Honor, I would now like to read from a document furnished me by counsel for Hartford, the dividends paid by Hartford for the years 1929 to 1940, inclusive. I will only read round figures, not the detail.

* * * * * * *

[fol. 3012] At this time, Your Honor, I would like to offer as Government's Exhibit 618, a memorandum which is entitled "Memoranda of conference held May 27, 1924, at Dorsey & Cole, Washington, D. C." stipulated as genuine by Owens-Illinois at page 6 of the stipulation, four pages. The copy I have is very indistinct and I would like to show the witness a typewritten copy, have him read it, and I will [fol. 3013] ask him a question.

Mr. Middleton: It is not signed by anyone; there is no signature attached.

Mr. Isseks: No signature at all.

Mr. Middleton: From whose files?

Mr. Isseks: It has on the back, "From Carter."

Mr. Middleton: From whose files?

Mr. Isseks: They tell me from Owens' files; at page 6 of the Owens stipulation, as memo marked 5824, unsigned.

Mr. Middleton: That is this one, it is not that one. An entirely different document.

Mr. Wood: Two memos on the same conference.

Mr. Isseks: Let the witness read it. Maybe it will refresh his recollection.

Mr. Middleton: May I say, so far as I can tell, Mr. Isseks, that is not stipulated.

Mr. Isseks: That is all right.

Mr. Middleton: I wanted to clear the record on that.

Q. Does the memorandum refresh your recollection of a conference you attended on or about May 27, 1924?

A. Not particularly. That is to say, not as to any particular conference. I attended such conferences as are referred to here, but I would not remember what was talked about, except it was addressed in general to this subject-matter. I don't recognise this memorandum. I don't think I wrote it.

Q. You say the memorandum sets forth subject-matter [fol. 3014] that was discussed?

A. Well, in general. We had meetings upon that subject immediately after the 1924 agreement.

Mr. Isseks: I offer it in evidence, Your Honor.

Mr. Middleton: We object to that. That is not certain identification of this memorandum as setting forth anything correctly, because he says it does not refresh his recollection, he only knows in a general way that they talked at times about these subjects.

The Court: I think I will admit it; overrule your objection.

Mr. Middleton: Certainly this witness didn't write it.

The Court: No. He says it contains the subject-matter of discussions he had about that time.

Mr. Haight: Just one moment. I hadn't seen this, if Your Honor please, I would like to add our objection, Hartford's, to the objection of Mr. Middleton.

The Court: It may be added.

Mr. Haight: They said in some way it involved Hartford. I didn't think it did, beforehand.

(Said Government's Exhibit 618 read by Mr. Kramer.)

Q. Now, Mr. Carter, I believe you testified when I asked you about this document, Government's Exhibit 618, that after the contract of April 9, 1924, there were meetings of counsel of both companies. By that you mean Hartford and Owens?

[fol. 3015] A. Yes, many such meetings.

Q. And did I hear you correctly when you said they started right after the contract?

A. Yes.

Q. Where were those meetings held?

A. I cannot tell that.

Q. Different places?

A. Different places.

Q. Dorsey & Cole's office?

A. Sometimes.

Q. Belknap's office, in Detroit?

A. I think, probably; I don't remember the meetings at all.

Q. But I am not talking about particular meetings. You said they were held in various places?

A. Yes.

Q. And some in Dorsey & Cole?

A. There might have been some in Hartford.

Q. Where do you remember they were held,—different places?

A. Why, yes, I was moving back and forth in connection with this business, and I would meet the lawyers sometimes in New York, sometimes in Washington, sometimes in Toledo, sometimes in Hartford, and I have been sometimes in Detroit.

Q. In the early stages the conversations related, did they not, as to what should be done in connection with the interferences?

A. Nor merely that, the interferences, but the litigations that were pending and what the situation was. In effect we were, you might say, in a partnership arrangement on [fol. 3016] our feeder and forming machine inventions after the 1924 agrement, and we acted that way.

Q. But you decided, did you not, not to tell anybody about the partnership?

A. I don't know whether we decided or not. I don't remember any discussion of it.

Q. Would you say you decided to tell everybody?

A. I don't remember any discussion on that subject. I would assume we would not tell anybody. Why should we? It is a matter of business. You don't carry on business in a gold-fish bowl.

Q. Decided you wouldn't tell the court or the Patent Office, or anybody; none of their business, is that right?

A. Well, I don't remember that there was any decision about the proposition. So far as I know we didn't tell anybody outside of our immediate companies.

Q. And their lawyers, of course?

A. Why, certainly the lawyers.

Mr. Isseks: Your Honor, at this time I would like to offer in evidence as Government's Exhibit 619, photostat of an original document on the stationery of Owens Bottle Company, dated June 2, 1924, addressed to Mr. H. H. Baker, subject: "Washington conference with Hartford on feeder litigation and interferences," seven pages, signed, not by the witness in his handwriting, basing it on my understanding of his handwriting, but signed, "Henry W. Carter" with a little letter "c," apparently his secretary,—stipulated

[fol. 3017] as genuine by Owens-Illinois Glass Company at page 6 of the stipulation.

Q. Is that your secretary's signature at that time, a lady or man's—whose initials are "EC"?

A. Well, I wouldn't know the signature, but the "EC" was a secretary of mine at that time.

Q. It was your practice, was it not, at times, for your secretary to sign your name over your typewritten signature with her initials?

A. Yes.

Mr. Isseks: I will offer it in evidence.

The Court: It may be admitted, over objection.

(Government's Exhibit 619 read by Mr. McCracken.)

Q. Mr. Carter, you wrote that exhibit, did you not, Government's Exhibit 619?

A. I have no doubt that I did.

Mr. Isseks: At this time, Your Honor, I would like to have marked as Government's Exhibit 620, a memorandum which is entitled at the top, "Carter memo. of meeting with license committee, June 10, 1924. Present" and it lists a group of men. Purports to be signed at the end, "Henry W. Carter," and stipulated as to genuineness by Owens Company at page 7 of the stipulation.

The Court: It may be admitted, over objection.

(Government's Exhibit 620 read by Mr. Lewis.)

Q. You wrote that memorandum, did you not, sir?

A. Yes.

Mr. Isseks: Your Honor, at this time I offer in evidence Government's Exhibit 621, a memorandum dated August [fol. 3018] 23, 1924, addressed to Mr. W. H. Boshart, "Re Federal Feeder negotiations," purporting to be signed by the witness, and stipulated as to genuineness by Owens, at page 8 of the stipulation.

The Court: It may be admitted, over objection.

(Government's Exhibit 621 read by Mr. Kramer.)

Q. Mr. Carter, you wrote that memorandum, did you not, sir?

A. I have no doubt that I did.

Q. And isn't it true that within a year after the date of your memorandum,—which is August 23, 1924,—Tucker, Reeves and Beatty, and Miller, were brought out by Hartford and Owens, the gentlemen whom you referred to, in your own words which you volunteered, as a "partnership"?

A. I think a little more than a year.

Q. Maybe a year and a month. I think the records will show it was August 15, but that is all right, whatever the record shows is true?

A. Miller, I think, came a little later, two or three months later.

Mr. Isseks: Now, at this time I would like to offer in evidence as Government's Exhibit 622, a photostat of an original document on the letterhead of Whittemore and so forth, dated May 28, 1925, addressed to Mr. Baker, and signed by the witness, three pages, stipulated as to genuineness by the Owens Company, at page 9 of the stipulation.

Q. I will ask you, Mr. Carter, whether that is your signature at the end of the letter?

[fol. 3019] A. Yes, it is.

Mr. Isseks: I offer it in evidence as the next Government's Exhibit.

The Court: It may be admitted, over objection.

(Government's Exhibit 622 read by Mr. Aspey.)

[fol. 3020] Q. Mr. Carter, you wrote that letter, did you not, sir?

A. I have no doubt that I wrote it.

Q. By the time you wrote that letter you had come to the conclusion, had you not, that the Tucker, Reeves & Beatty patents were worth more than—to quote what you said in another letter—a tinker's dam?

A. All I know is what is written here; I don't know anything about it, otherwise.

Mr. Isseks: Your Honor, at this time I offer Government's Exhibit No. 623, a photostat of an interoffice communication, dated July 14th, 1925, addressed to Mr. H. H. Baker, signed by the witness, and stipulated as to genuineness by Owens-Illinois at page 10 of the Stipulation.

Q. I ask you, Mr. Carter, whether it is your signature?

A. It is, yes.

Mr. Isseks: I offer it in evidence, Your Honor.
The Court: It may be admitted, over objection.

Thereupon, Government's Exhibit No. 623 was read to the Court by Mr. Kramer, of counsel for the government.

Q. You wrote that memorandum, did you not, sir?
A. Yes, sir.

Mr. Isseks: Your Honor, at this time I should like to offer in evidence, as Government's Exhibit No. 624, a photostat of an original inter-office memorandum, dated July 21, 1935, addressed to Mr. H. H. Baker; subject, "T. R. & B. Negotiation"; purported to be signed by the witness; stip-
[fol. 3021] ulated as to genuineness by Owens-Illinois, at page 10 of the Stipulation.

Q. I ask you, Mr. Carter, whether that is your signature at the end thereof?
A. That is my signature, yes.
Mr. Isseks: I offer it in evidence, Your Honor.
The Court: It may be admitted, over objection.

Thereupon, Government's Exhibit No. 624 was read to the Court by Mr. Lewis, of counsel for the government.

Q. You wrote that letter, did you not, sir?
A. I have no doubt that I did.
Q. Mr. Carter, you were active in connection with the final arrangements of the Tucker, Reeves & Beatty deal, were you not?
A. In general; I did not take part in the negotiations.
Q. You knew, did you not, that the price was $1,600,000?
A. Yes, I knew that.
Q. You knew that Owens loaned Hartford its one-half of the purchase price?
A. Temporarily, yes.
Q. Loaned them the money?
A. Yes, temporarily. It was purely a temporary ar-
[fol. 3022-3027] rangement. Hartford wanted time to get out a preferred stock issue to raise that amount of money; and we advanced the money to them, I think, for a couple of months.
Q. Do you know how many months?
A. It was a few months, while they were going through the necessary procedure of getting out their stock; and then they paid us back. That closed that part of the deal.

Q. It is a fair statement to say, whatever period it was before they paid it back, Owens financed the entire deal?

A. Yes, sir.

Mr. Isseks: Your Honor, at this time I should like to offer in evidence as the next government exhibit, No. 625, a document which bears no dated, but has this indication on the top thereof: "Owens Bottle-Hartford-Empire Memorandum of Conference among Herbert Smith, Goodwin Smith, Baker, and Williams, at New York, December 30, 1925". The photostat is a photostat of a carbon copy which has on the face of it: "File H.H.B.", unsigned, but stipulated by Owens as coming from its files at page 4 of the Stipulation.

I offer the document in evidence.

* * * * * * *

[fol. 3028] The Court: I am going to defer ruling upon the document at this time.

(Morning recess.)

The Court: Proceed.

Q. Mr. Carter, I believe you testified this morning that there was more than one conference of these two groups of lawyers in connection with the proposed patent matters and patent litigation matters.

A. I would say there were many conferences.

Q. There were memorandums made, were there not, of some of these conferences?

A. Yes, I made some frequently; I generally did make a memorandum.

Mr. Isseks: Your Honor, at this time I should like to have marked as Government's Exhibit No. 626, a six page memo-[fol. 3029] randum, a photostat of a memorandum, which is headed at the top: "Conference on Feeder litigation, Washington, D. C., April 6th, 1926;" and then it has those who were present: "Dorsey, Carter, Williams, Laurens, Byrnes, Parham, Brown, and Mr. W. J. Belknap joined the conference later". It is stipulated by Owens as coming from its files, page 4 of the Stipulation.

Q. I ask you, Mr. Carter, to read the memorandum—I will ask you to read a copy because the photostat is so poor, and then I will ask you some questions.

A. I am very sure I did not write this memorandum.

Q. Were you present at the conference referred to?

A. And I don't remember anything about the conference. I remember attending many conferences and discussing the subject matters that are listed here.

Mr. Isseks: I offer it in evidence, Your Honor.

The Court: It may be admitted, over objection.

Mr. Middleton: Objection to the exhibit.

Thereupon, Government's Exhibit No. 626 was read to the Court by Mr. Kramer, of counsel for the government.

Q. Mr. Carter, does the reading of the memorandum in any way refresh your recollection as to what transpired at the particular conference referred to in the memorandum, Government's Exhibit No. 626?

A. No. All I can tell you about it is that the subject matter sounds familiar. I do not remember the meeting at all. [fol. 3030] Q. You have no reason to doubt the contents of the memorandum, have you?

A. No, sir.

Mr. Isseks: Your Honor, at this time I should like to offer Government's Exhibit No. 627, a memorandum which has at the top: "To the Operating Committee of the Owens Bottle Company—Meeting November 6th, 1926—Report on present status on gob feeder patent situation"; purports to be signed by Henry W. Carter, Treasurer. The copy we have is not stipulated, Your Honor; but there is a certificate at the end thereof, namely, a certificate that "What we furnish is a true copy of the original, and that the original is in the file or records of the company". It is signed by E. F. Martin, Assistant Secretary and Assistant Treasurer of Owens-Illinois Glass Company.

Mr. Emery: If Your Honor please, before we leave Exhibit No. 626, my understanding is that it is not received as to the truth of the recitals of any facts.

The Court: That is admitted only for the one purpose. Objection was reserved.

Mr. Isseks: Is there any question about the authenticity of this document?

Mr. Middleton: No question.

Mr. Isseks: Counsel says that there is no question, Your Honor. I offer it in evidence. I should like to have it read.

Thereupon, Government's Exhibit No. 627 was read to the [fol. 3031] Court by Mr. Apsey, of counsel for the government.

Q. You wrote that document, did you not, Mr. Carter;
A. Yes, sir.

Mr. Isseks: Your Honor, at this time I should like to offer as Government's Exhibit 628 a photostat of an original memorandum which recites on the top: "Carter Memos of Columbus conference held at the Deshler Hotel, Columbus, Ohio, Sunday, September 9, 1928". It has four pages. The photostat of the original bears the witness's signature.

Q. I ask you, Mr. Carter, whether you can identify it?
A. Yes, that is my signature.

Mr. Isseks: This has been stipulated by Hartford as coming from its files,—page 7. I offer it in evidence, in view of the stipulation, and the witness's identification of his signature.

The Court: It may be admitted, over objection.

Thereupon, Government's Exhibit No. 628 was read to the Court by Mr. Lewis, of counsel for the government.

[fol. 3032] Q. You wrote that, did you not, sir?
A. I have no doubt that I wrote it.

Mr. Isseks: At this time, Your Honor, I would like to offer Government's Exhibit 629, the original of an intra-office communication on the stationery of the Owens-Illinois Glass Company, dated October 12, 1929, addressed to Mr. H. W. Carter, carbon copies to R. H. Barnard and Mr. W. E. Levis. Subject, "License and relation with Hartford-Empire Company", signed Garland Lufkin.

Q. Mr. Carter, who is Mr. Lufkin, or who was he at that time?
A. What date was that?
Q. October 12, 1929?
A. I think he was chief engineer.
Q. According to the newspapers he was appointed general manager of the Glass Container Division day before yesterday?
A. That is the same Mr. Lufkin.
Q. The same gentleman?
A. The same man. Yes.

Q. I show you this original document. There is some handwriting on the left-hand side. Is that your handwriting?

A. That is my handwriting. Yes.

Q. It reads what?

A. "No longer in point, in view of the new agreement of July 1, '32."

[fol. 3033] Mr. Isseks: Thank you, sir. I offer it in evidence.

The Court: It may be admitted over objection.

(Exhibit 629 is read by Mr. Kramer.)

Q. Mr. Carter, you said you recognized the handwriting here as yours and you say, "No longer in point, in view of new agreement of July 1, 1932. HWC". Apparently you looked at the document again some years—at least two and one-half years after you received it?

A. I would judge so.

Q. Why was the memorandum, "No longer in point, in view of new agreement of July 1, 1932"?

A. I could not tell you.

Mr. Isseks: Your Honor, at this time I would like to offer in evidence as Government's Exhibit 630, a memorandum dated January 7, 1930, addressed to Mr. William E. Levis, subject: "Activities of the Patent and License Department for 1929 and 1928 and certain comparisons", purportedly signed by the witness as the head of the patent and licensing department. At the end of it, "Respectfully submitted, Henry W. Carter". There is a certificate on the first page, stamp, signed by Mr. Martin, stating: "This is a true copy of the original records of the company", and I offer it in evidence.

* * * * * * *

[fol. 3034] The Court: It may be admitted over objection.

(Mr. Apsey reads Government's Exhibit 630.)

Q. You wrote that, did you not, Mr. Carter?

A. Yes.

Q. Who is Mr. Morrison, referred to by you in that memorandum?

A. What was the date?

Q. January 7, 1930?

A. Mr. Morrison, in the old organization prior to the merger with Illinois Glass, was our general sales manager and after that time in the new organization he was still important in the sales organization, but I don't think he retained the position of general sales manager.

Q. Just prior to this date of January 7, 1930, the Owens Bottle Company and Illinois Glass Company had gotten together in some way?

A. Yes.

Q. And Mr. Levis became an executive of the Owens-Illinois Company?

A. Yes.

Q. And you were reporting to him as head of the patent department?

A. Yes.

[fol. 3035] Q. And naturally you had a little commercial angle too, did you not?

A. Well, you can't evaluate patents without considering the commercial side.

Q. You were interested in the Underwood Companies, who were notorious price-cutters, were you not?

Mr. Middleton: I object to the form of the question.

Mr. Isseks: I withdraw the question.

Q. You were interested in the Underwoods, were you not?

A. That letter shows my interest, or the nature of my interest. I don't remember anything in particular about it.

Q. What was their reputation in the industry in regard to prices?

A. My recollection is they uniformly quoted lower prices than we did.

Q. They were price-cutters, weren't they?

A. You might call them so.

Q. You didn't like price-cutting, did you?

A. Nobody in business likes price-cutting.

Q. Mr. Underwood liked it; you knew he liked it, didn't you?

A. Not when it cut into him.

Q. You predicted the failure of this Oil City and similar ventures, did you not?

A. I did.

Q. And you suggested Mr. Stevenson of the Glass Container Association do something about it, did you not?

A. That letter is the letter. That is all I know about it.
[fol. 3036] Q. Did they do anything about it, Mr. Stevenson of the Glass Container Association?

A. I never talked to Mr. Stevenson about it.

Q. Did Mr. Levis ever tell you whether he did anything about it,—you wrote it to him?

A. He never did.

* * * * * * *

[fol. 3037] Mr. Isseks: At this time the government offers as Government's Exhibit 631, photostat of a letter dated January 29, 1932, addressed to Mr. F. Goodwin Smith, signed by the witness, carbon copy to Messrs. Boeschenstein, Barnard and Soubier. Notation at the end, "Shown to Mr. Phillips before mailing". Stipulated by Owens-Illinois as to genuineness at page 21 of the stipulation.

The Court: It may be admitted, over objection.

(Same is read by Mr. Lewis.)

Q. Now, Mr. Carter, will you please look at photostat of the carbon copy and see if you can identify the handwriting in the upper left-hand corner.

A. (After examining same.) No, I cannot.

Q. Now, Mr. Carter, I show you Government's Exhibit 109, which is a photostat of an original letter dated September 25, 1928, from yourself to Mr. F. Goodwin Smith, relating to the Rankin feeder, and ask you whether that is your signature on the photostat?

A. It is, yes.

Q. I also show you Government's Exhibit 110, which is a letter dated October 3, 1928, from yourself to Mr. Brown, and that, too, deals with the Rankin feeder, and ask you whether the signature at the end is yours?

A. That is my signature.

Mr. Isseks: At this time I would like to offer in evidence [fol. 3038] as Government's Exhibit 632, a memorandum dated October 4, 1928, addressed to Mr. W. H. Boshart, "Re: Suggested purchase of Rankin patent", which purports to be signed by the witness as treasurer, and stipulated as to genuineness at page 14 of the stipulation by Owens-Illinois.

The Court: It may be admitted, over objection.

(Government's Exhibit 632 read by Mr. Apsey.)

Q. Mr. Carter, did you write that document?
A. Yes.

Mr. Isseks: Your Honor, at this time I offer in evidence a copy of a document on the stationery of Owens Bottle Company, dated Toledo, October 4, 1928, which is addressed to Mr. R. D. Brown, care of Dorsey & Cole, and purports to be signed on behalf of the witness, but has a notation on it: "Not sent. HWC". It is offered for the limited purpose of showing the state of mind, purpose and so forth, of Owens Bottle Company, and it is not offered for the purpose of showing it was received by the Hartford-Empire Company.

Mr. Middleton: Now, Your Honor, we object to that. I think the obvious import would be just the contrary. In effect it revokes what he himself has written down, when he says he cannot use it, and is an improper statement.

The Court: What information have you it was not sent?

Mr. Isseks: It has written right on it, "Not sent. HWC". [fols. 3039-3040] I assume it was not sent.

Q. Is that your handwriting on there?
A. Yes.
Q. That is your initials?
A. Yes.
Q. Apparently you didn't send this letter, did you?
A. All I know is what I see there.

Mr. Isseks: Your Honor, I submit it has a value for the limited purpose, namely showing the state of mind of the writer, who was the treasurer at that time of the Owens Bottle Company.

The Court: I think I will sustain the objection.

* * * * * * *

[fol. 3041] Mr. Isseks: Your Honor, at this time I would like to have marked as the next exhibit, Government's Exhibit 634, a memorandum dated May 22, 1928, addressed to Mr. W. H. Boshart, "Hartford Litigation Expenses", purported to be signed by the witness as treasurer, stipulated [fol. 3042] as genuine by Owens-Illinois at page 13 of the stipulation.

The Court: You offer it?

Mr. Isseks: Yes, Your Honor.

The Court: It may be admitted, over objection.

(Government's Exhibit 634 read by Mr. Apsey.)

Q. Mr. Carter, did you write that memorandum, Government's Exhibit 634?

A. Yes.

Q. I call your attention, Mr. Carter, to the second paragraph, where you state, "You will recall that this subject was one of those discussed at the meeting Mr. Williams and I had with Hartford representatives in the Belmont Hotel, New York, last November." Do you remember the conference referred to there?

A. No.

Q. No recollection whatsoever?

A. None whatever.

Q. Have you any recollection of any conference which you attended with Mr. F. Goodwin Smith, at which Mr. F. Goodwin Smith raised the question of Owens' contributing to the legal expense of Hartford in connection with the feeder litigation?

A. No, I have no recollection of any meeting on that. I know that understanding was arrived at and we agreed to divide the expenses.

Q. I show you Government's Exhibit 114, dated August 7, 1928, which purports to be a memorandum from you to Mr. H. G. Phillips. I show you the end thereof. Is that [fol. 3043] your signature?

A. Yes.

Q. There is some handwriting on it. Is that your handwriting?

A. Yes.

Q. Will you please read it?

A. It says: "Mr. Phillips says 'Prefer to leave this question for Mr. Boshart's return'."

Q. And it has your initials and the date 8-14-28?

A. Yes.

Mr. Isseks: Your Honor, at this time, if I didn't offer it before, I offer the handwritten part on Government's Exhibit 114, which is part of the document, in evidence.

The Court: No indication but that the whole exhibit was admitted.

Mr. Isseks: I don't have to offer it again? I thank you very much.

Q. I show you Government's Exhibit 115, Mr. Carter, which is dated August 1, 1928, addressed to you "Personal", and it says, "My dear Henry", signed by Mr.

Smith, and it has attached to it certain bills. Do you remember receiving that letter?

A. No.

Q. No question you received it, though, is there?

A. No, I have no doubt but that I received it.

Q. The handwriting on these bills, various handwritten notations on the bills——

[fol. 3044] A. Mine.

Q. All yours?

A. All mine.

Mr. Isseks: At this time I wish to direct the Court's attention to Government's Exhibit 116, which has been offered in evidence, from the witness to Mr. F. Goodwin Smith, dated September 8, 1928; Government's Exhibit 119, dated July 27, 1929, addressed to Mr. Phillips, which purports to be signed by the witness; and Government's Exhibit 121, dated October 20, 1932, addressed to Mr. Phillips, and purports to be signed by the witness, and stipulated as to genuineness by Owens.

Q. I show you Government's Exhibit 121 and ask you to read it and tell us whether you wrote that memorandum.

A. I don't remember it but I have no doubt but that is my letter.

Q. The first paragraph says: "My understanding of the working agreement in regard to litigation expense arrived at yesterday between Mr. Levis and Mr. Goodwin Smith is as follows:" —then you list five items. That understanding that is set forth here was obtained by you from somebody else?

A. I don't know. All I know is what the letter says.

Q. You wrote it?

A. I undoubtedly wrote it.

Q. In your course of business, if you set forth an agreement which you say was agreed to between two other people, is it an understanding you obtained at a conference at [fol. 3045] which you were present, or something somebody else gave you?

A. It would be my understanding of some report of conference which I did not attend.

Q. You referred to an understanding between Mr. Levis and F. Goodwin Smith; you sent copies to Mr. Levis and Mr. Smith and Hartford accounting department. Do you

have any recollection whether you got the understanding from Mr. Levis or Mr. Smith?

A. No, I have no recollection about it at all.

Q. Normally, though, you would get any statement of a conference between Mr. Levis and Mr. Smith from your superior, Mr. Levis, would you not?

A. Probably.

Mr. Middleton: If Your Honor please, would it be proper to ask Mr. Isseks what point is made with respect to this matter and this examination?

The Court: As I recall 121, I have no notation to that effect, but I think it was admitted with the understanding Mr. Carter, in due course, would be questioned as to its authenticity. Is that correct?

Mr. Isseks: There was objection made by various counsel and I offered the document for the limited purpose, and will have to wait, I said, as to what the understanding was, until we got Mr. Carter and Mr. Levis on the stand. I now offer it for all purposes, in view of the fact the witness says he wrote it, and whatever it states there he got from somebody connected with people at the conference. At that time [fol. 3046] it was offered for the limited purpose of showing the state of mind.

The Court: I don't have the exhibit before me but——

Mr. Middleton: My purpose in raising the question was merely in perfect good faith to ascertain what if any point Mr. Isseks makes with respect to this letter, assuming the contents are true and that it goes in as proof of the facts stated. Just for the moment, to discuss it, I wonder if Mr. Isseks questions those statements as being the truth?

Mr. Isseks: No, I offer them as the truth.

Mr. Middleton: You offer them to establish that arrangement was made, that the arrangement that was made was in conformity with what was said in the letter?

Mr. Isseks: That is all.

Mr. Middleton: That clears up the question.

Mr. Isseks: I am not questioning anybody's veracity at all.

The Court: It may be received.

* * * * * * *

At this time, Your Honor, I would like to offer in evidence [fol. 3047] as Government's Exhibit 635, a photostat of an

original letter addressed to the witness, and signed Hartford-Empire Company by R. D. Brown, stipulated as to genuineness by Owens-Illinois at page 13 of the stipulation, dated July 17, 1928.

The Court: It may be admitted, over objection.

(Government's Exhibit 635 read by Mr. Kramer.)

Q. Did you receive that letter in the regular course of business?

A. I have no recollection about it whatever.

Q. You don't doubt you received it, though?

A. No, I haven't any doubt.

Mr. Isseks: At this time I would like to offer the reply from the witness to Mr. Brown, dated July 23, 1928, stipulated *to* as to genuineness by Owens-Illinois, and I offer it as Government's Exhibit 636.

The Court: It may be admitted, over objection.

(Government's Exhibit 636 read by Mr. Kramer.)

Q. You wrote that letter, did you not, sir?

A. I don't remember it, but I have no doubt that I wrote it.

Q. Now, Mr. Carter, I show you Government's Exhibit 137, which purports to be memorandum dated May 25, 1926, from yourself to Mr. Boshart, regarding "Hatch article on development of gob feeding", and ask you to look at the end thereof and tell us whether those initials were put thereon by your secretary, who at that time had the initial of "S"?

A. (After examining same.) I don't recognize the handwriting, and I don't remember what secretary that is.

[fol. 3048] Q. Did you write the memorandum? Will you be kind enough to look at it, please?

A. (After referring to same.) I would say that was my letter.

Mr. Isseks: That memorandum relates to the proposed article, Government's Exhibit 137, with reference to a proposed article, as to which Your Honor is familiar, namely the Clarke article.

At this time I would like to offer as Government's Exhibit 637, a letter dated June 4, 1926, addressed to Mr. Hatch, purporting to be signed by the witness, and stipulated as

to genuineness by Owens-Illinois at page 11; and there is a reference in this letter to an enclosure, and we have, and we would like to offer as Government's Exhibit 638, a photostatic copy of what we understand to be the enclosure, which is a letter on the stationery of the American Bank, at Toledo, Ohio, dated May 27, 1926, addressed to Mr. John H. McNerney, assistant secretary-treasurer, Owens Bottle Company, purports to be signed William P. Clarke, president. This document, too, has been stipulated as to genuineness by Owens Company at page 11 of the stipulation. I offer both exhibits, 637 and 638.

The Court: They may be admitted, over objection.

Mr. Haight: I presume that they are received for the limited purpose indicated at the time Your Honor dealt with other correspondence on the Clarke article, namely, to show cooperation between Owens and Hartford.

[fol. 3049] The Court: That is right.

* * * * * * *

Q. Did you write that letter, Government's Exhibit 637?

A. I don't remember it, but I have no doubt, from what I say there, that I wrote it.

Mr. Isseks: I would like to have Government's Exhibit 638 read.

(Government's Exhibit 638 read by Mr. Apsey.)

Q. Now, Mr. Carter, look at Government's Exhibit 637 and 638. Did you enclose the letter which is marked Government's Exhibit 638 with the letter which is marked Government's Exhibit 637?

A. I have no recollection about it whatever, but I would [fol. 3050] assume from what I see here that I did enclose this Clarke letter.

Mr. Isseks: Thank you very much.

Your Honor, at this time I would like to offer in evidence two pieces of paper, the first as Government's Exhibit 639, a letter dated June 10, 1926, to Mr. Hatch, signed by Mr. Carter, stipulated as to genuineness by Owens at page 11. There is an enclosure referred to in this letter, namely a letter from the witness to Mr. Clarke, and I offer as the next Government's Exhibit, 640, the enclosure, which is dated the same date, June 10, 1926, addressed to Mr. Clarke,

president of the American Bank, and purports to be signed by the witness. This document, too, has been stipulated as to genuineness by Owens-Illinois, at page 11 of the stipulation.

The Court: They may be admitted, over objection.

(Government's Exhibit 639 read by Mr. Lewis.)

Q. You wrote that letter, did you not, Mr. Carter?

A. I don't remember writing it but I have no doubt but that is my letter.

(Government's Exhibit 640 read by Mr. Lewis.)

Q. Mr. Carter, you wrote Government's Exhibit 640, a letter to Mr. Clarke, did you not?

A. I would have to make the same answer. I have no recollection of writing the letter but I have no doubt that is my letter.

Q. Now, do you remember there came a time in 1932 when [fol. 3051] the Circuit Court of Appeals for the Third Circuit, in the Hazel-Atlas case, overruled Judge Gibson two to one, and the opinion was written by Judge Buffington, and in that opinion he referred to the Clarke article at length?

A. I remember that.

Q. Do you remember there was some discussion between representatives of Owens, representatives of Hazel-Atlas, as to the Clarke article, at that time, after the decision of the Circuit Court of Appeals?

A. No, I don't remember that.

Q. Do you remember there was some gentleman who was trying to investigate the origin of the Clarke article on behalf of the Hazel-Atlas Corporation after the decision?

A. Well, I remember something of that sort, yes.

Q. What do you remember?

A. I think I saw some memo or something recently that brought the matter of their having been some attempt made by Hazel-Atlas representatives to get in touch with Mr. Clarke and have him repudiate the article.

Q. And do you remember Mr. Hatch was very anxious to make sure Mr. Clarke would not repudiate the article?

A. I don't remember that at all.

Q. Don't you remember Mr. Hatch came out to Toledo and stayed at the Commodore Perry Hotel and got in touch

with you and said they had to get the Clarke article at all costs; don't you remember that?

A. No.

Mr. Haight: What do you mean by "had to get "the [fol. 3052] Clarke article"?

Q. Don't you remember there was some mystery about the Clarke article, and you were all fearful if Hazel-Atlas got it they might succeed in having the Circuit Court of Appeals for the Third Circuit have a rehearing and possibly reverse the decision of the District Court?

A. No, I don't remember anything of the kind. My part was that the Clarke article was true, every word of it, and the fact is the Clarke article was originally suggested by me, and the circumstances were these: I told Mr. Brown one day when we were talking over the general situation that in my judgmnt the extraordinary importance of the gob feeding development in this glass industry hadn't been recognized and until the people understood the facts—we were speaking particularly about the Patent Office and their passing on the claims of the Hartford-Empire Company—nobody could evaluate those claims unless they understood the facts, and somebody ought to write it up and put the facts properly before the Patent Office. That is why sometime later Mr. Brown wrote to me and asked if I would write a history of it and I said to him I wasn't the proper person because it should be somebody practical in the industry, and the next thing I knew Mr. Hatch told me that he was writing an article, the facts for which he had gathered mostly from the union records, and that he planned to have a union man go over that article and sign it, father it, and to have it published. I never saw any reason for being ashamed of [fol. 3053] the article.

Q. You wrote to Mr. Boshart on May 25, 1926, Government's Exhibit 137, "Hatch originally submitted the article to me in his letter of March 30th, which is attached. Previous to that we had had some talk over the character of the article and I subsequently, under date of April 17th, considered his proposed article at length and criticized it rather severely." Is that true?

A. That is true, yes.

Q. (Reading:) "To my criticism he replied under date of April 19th, a copy attached, pointing out inasmuch as he

was treating the article from the labor point of view and upon the authority of papers of official publications, he would be unable to handle the facts as either he or we would wish." Is that true?

A. Why, so far as I know it is true.

Q. At this time he was expecting to have the article fathered by Mr. Maloney—(Description of Mr. Maloney by Mr. Isseks stricken from the record.) "He failed in this and subsequently asked Mr. Clarke to publish it." Is that true?

A. That is my understanding.

Q. "This Mr. Clarke has agreed to do, provided this company passes the article as agreeable to us." Is that true?

A. Yes.

Q. "Under the circumstances I do not see that we need be very critical in our treatment of the article". Was that [fol. 3054] true?

A. That is what I stated.

Q. Was it true?

A. Well, what do you mean? What was true?

Q. That you need not be critical of the article?

A. Well, that is a matter of opinion; it is not a question of fact.

Q. Then you went on to say, "If not too rank, would say we better let it go through." Did you write that?

A. I wrote it, undoubtedly, but I would like to say about that, this: that here was a man writing up a piece of history setting forth some facts, and on the whole knocking the Owens machine development and booming the other development. Now, the question of how far a man will be correct in expressing the views that the Owens Machine development was or was not being superseded to a large extent, or to a very large extent, was a matter of judgment. The question of its being what I said, being too rank, here, meant that all that we were trying to do was to put in print and as a matter of history a record of the fact that the feeder development was a tremendously important development, which had had a very great influence in overcoming the supreme position which the Owens Bottle Machine had had at that time.

Q. Was it the purpose to get this article before the Patent Office?

A. Absolutely, yes.

Q. Wasn't it the purpose to have it fathered by somebody [fol. 3055] not connected with Owens or Hartford?

A. I think that was undoubtedly so. The purpose was to put the facts before the Patent Office.

Q. Why didn't you go down there, why didn't Owens and Hartford go down to the Patent Office and give them the facts?

A. Because we wanted the authority——

Mr. Haight: It seems to me, if Your Honor please—all right, I withdraw the objection.

A. (Continued) —because we wanted outside authority in connection with the facts, which we got through the head of the Glassblowers' Association, Mr. Clarke.

Q. So, then, in 1932, when the matter became one of public record and report of the United States Court, and Hazel sent somebody out to Toledo to try to find out the facts, did you help them?

A. They never came to us. I didn't know anything about it until afterwards.

Q. Never heard about it?

A. I heard about it afterwards, yes, but at the time, no.

Q. At the time you knew nothing about it?

A. That never came to us. I didn't know anything until after the man had left here.

Q. Didn't Mr. Hatch come out—excuse me, are you through?

A. I don't know when Mr. Hatch came out.

Q. Didn't he come out here in an effort to see if he couldn't get the information and prevent this other gentleman from getting it?

[fol. 3056] A. I haven't any idea on that subject at all, no.

Q. I show you photostatic copy of original letter stipulated as to genuineness by Owens-Illinois on page 21, stamp filed May 25, 1932, addressed to you in longhand by Mr. Hatch, and ask you whether you received that letter?

[fol. 3057] A. My initials are on it. I assume I received it. I have no recollection about it.

Mr. Isseks: Your Honor, I offer it in evidence, as Government's Exhibit No. 641. It is a photostatic copy of a letter on the stationery of the Commodore Perry. No date. It has the Owens-Illinois Glass stamp.

(Document shown Court.)

The Court: It may be admitted, over objection.

Q. "Mr. Carter,—Am sending copy to Belknap. Just told McNerney of very successful results. You assisted me greatly. In haste. R. F. Hatch." Does that refresh your recollection as to what happened after the decision of the Third Circuit Court of Appeals?

A. No, I have no recollection of it at all.

Q. You had nothing to do with it, did you?

A. Not so far as I know.

Mr. Middleton: May I interrupt to ask what consideration Mr. Isseks is giving now to the handwriting in the upper right hand corner? There is no date on this letter. I am wondering how it is connected, in your thinking, with the episode you are talking about.

Mr. Isseks: This has the stamp date of May 25. The witness said he had his handwriting on it.

Q. Those are your initials: H.W.C.?

A. Yes, sir.

Mr. Middleton: That is not what I referred to. I refer [fol. 3058] to the comments in the upper right hand corner, which is not in his handwriting, and which, as I understand, was not put on this letter until the TNEC hearing; so that it was not put on back in 1932 at all, and had no connection with what happened in 1932.

Mr. Isseks: Maybe the witness can tell.

Q. It says here: "Am sending copy to Belknap. Just told McNerney of very successful results." What was it about?

A. I would not know that I had ever seen this letter before. I don't know what it is about.

Q. You never saw it before?

A. I say, I would not know now I had ever seen the letter. I assume, from the fact that my initials are on it, that I did receive it at some time; but what it is about, and why I received it, I have not the slightest idea.

Mr. Middleton: Your Honor, may I make my position clear? In the upper right hand corner there is a notation which refers to the William P. Clarke article.

We are prepared to show, if necessary, that was not put on there in 1932. That was a comment put on when this

paper was used in connection with the TNEC hearing in 1938; so the subject matter of the letter cannot be determined from that comment.

Mr. Isseks: How else do we determine it? The witness says he does not know.

Mr. Middleton: Maybe you cannot.

Mr. Isseks: We did not put it on. Does counsel say that the government put it on? That is the way we got it from [fol. 3059] them.

The Court: You may proceed. The Court will have to take it as it is.

Mr. Isseks: At this time, Your Honor, perhaps we can get a little elucidation from another document written by Mr. Hatch to the witness, stipulated as to genuineness by Owens, page 22.

Q. I show you a letter dated May 28, 1932—three days after the stamp notation—four days after the handwriting notation—addressed to Mr. H. W. Carter, Owens-Illinois Glass Company, signed R. F. Hatch, Hartford-Empire Company. Perhaps that will refresh your recollection. Did you get that letter, Mr. Carter, in the regular course of business?

A. I have no recollection about it, but I have no doubt that I received it.

Mr. Isseks: I offer it in evidence, Your Honor.

The Court: It may be omitted, over objection.

Mr. Isseks: I should like to have it read.

Thereupon, Exhibit No. 642 was read to the Court by Mr. Kramer, of counsel for the government.

Q. Did you bring this matter to the personal attention of Mr. Levis?

A. I have no recollection of doing so.

Q. You would not say you did not?

A. No, sir.

[fol. 3060] Q. In what way could Mr. Clarke have "caused us a lot of trouble"?

A. I don't know.

Q. Well, I don't know. He wrote you the letter, did he not?

A. The letter is addressed to me. I have no recollection about it at all.

Q. Do you not remember that Mr. Hatch came out here?
A. Mr. Hatch came out here so many times.
Q. Oh sure, he did.
A. It was impossible for me to place him.
Q. There is not any doubt about that; but do you not remember that Mr. Hatch came out here in connection with the decision of the Third Circuit Court of Appeals?
A. No, sir.
Q. No recollection?
A. No, sir.
Q. Your recollection is absolutely blank?
A. Absolutely blank.

* * * * * * *

[fol. 3061] At this time, Your Honor, I should like to have marked as the next government exhibit, No. 643, a letter dated August 8, 1924, addressed to Mr. F. Goodwin Smith, signed by the witness; stipulated as to genuineness by Hartford-Empire, at page 8 of the stipulation.

The Court: It may be admitted, over objection.

Mr. Isseks: I should like to have it read, and I will ask the witness whether he wrote it.

Thereupon, Government's Exhibit No. 643 was read to the Court by Mr. Apsey, of counsel for the government.

(Afternoon recess.)

The Court: Proceed.

Q. Mr. Carter, before recess, you were reading Government's Exhibit No. 643, which is Hartford-Empire copy of a letter from yourself to Mr. Smith. Did you write that letter?

A. I have no recollection of it, but I have no doubt I wrote it.

Mr. Isseks: Your Honor, before I forget, I should like to point out, as to Exhibits Nos. 641 and 642, as to which Mr. Middleton pointed out that there was certain handwriting in the upper right hand corner, that the handwriting on both exhibits have "H-E vs. Hazel-Atlas" in both cases. In one case, it has "William P. Clarke Article in July 17, 1926, Glass Budget". In the other it has "William P. [fol. 3062] Clarke Article in July 17, 1926, Glass Budget".

Your Honor, at this time I should like to offer in evidence,

as Government's Exhibit No. 644, a memorandum to Mr. Boshart, dated May 4, 1925, purportedly from the witness; stipulated as to genuineness by Owens-Illinois, at page 9 of the Stipulation.

The Court: It may be admitted, over objection.

Thereupon, Government's Exhibit No. 644 was read to the Court by Mr. Kramer, of counsel for the government.

Q. Did you write that memorandum, sir?

A. I have no recollection of it, but I have no doubt I wrote it.

Q. At this time I should like to show you a document marked Government's Exhibit No. 127, but as to which decision has been deferred because of an objection made on the ground that it is privileged. I show you some handwriting in the upper left hand corner, and ask you whether you recognize the handwriting?

A. My handwriting.

Q. Where it says, "Mr. Levis, please note"; that is in your handwriting?

A. Yes, sir.

Q. Where it says, "Discussed with Mr. Levis"; is that in your handwriting?

A. Yes, sir.

Q. Where it says, "File"; is that in your handwriting?

A. Yes, sir.

Q. The initials are in your handwriting?

[fol. 3063] A. Yes, sir.

Mr. Isseks: I am not going to renew my offer at this time because I understand that Your Honor has the matter under consideration.

At this time I should like to offer Government's Exhibit No. 645, a memorandum dated December 5, 1930, addressed to Mr. William E. Levis: "Memo of talk with Hartford"; signed, "Patent and License Department, Henry W. Carter, Vice-President in charge." It is stipulated as to genuineness by Owens-Illinois, at page 19 of the Stipulation. I offer it in evidence.

The Court: Is the date December 5 or 6?

Mr. Isseks: December 6. I am sorry. The photostat is difficult to read.

Mr. Williams: What year?

Mr. Isseks: 1930, sir.
The Court: It may be admitted, over objection.

Thereupon, Government's Exhibit No. 645 was read to the Court by Mr. Lewis, of counsel for the government.

Q. Mr. Carter, did you write that memorandum?
A. I have no doubt I wrote it.
Q. Do you remember, Mr. Carter, after the decision of the Circuit Court of Appeals of the Third Circuit that there was some negotiations entered into between Hartford and Owens as one group, and Hazel-Atlas as another, which finally resulted in a group of contracts that were executed as of July 1, 1932?
[fol. 3064] A. Yes, sir.
Q. Did you participate in the conferences on the Owens-Hartford side?
A. Some of them.
Q. You participated in conferences with Mr. Levis, did you not?
A. There were times when I did, yes.
Q. You participated, did you not, at times in conferences with the Hartford people?
A. Yes, sir.
Q. At this time, I show you Government's Exhibit 141, which is a long document, dated July 18, 1932, headed: "Carter Memorandum on proposed new license contracts, dated July 1, 1932, concerning feeder, former, and suction invention developments." It has the notation on top: "Prepared for directors' meeting". Do you recall submitting at a directors' meeting a report in the nature of the various contracts entered into?
A. No, I don't recall it.

Mr. Isseks: It has been shown at one time, Your Honor, the actual minutes which were read, showing that Messrs. Williams and Carter came to the meeting and gave reports; and this document has been stipulated as to genuineness by Owens-Illinois, I believe,—yes,—and is in evidence.

Q. I should like to have the witness read it and tell us whether he in fact wrote it?
[fol. 3065] A. I have no doubt I wrote it.

Mr. Isseks: Your Honor, at this time I should like to call Your Honor's attention to Government's Exhibit No.

174, dated May 14, 1929, addressed to the witness, from F. Goodwin Smith; and to Government's Exhibit No. 175, from the witness to F. Goodwin Smith.

Q. I show you Government's Exhibit No. 175, which is a photostatic copy of the original letter, and ask you whether you wrote that letter, sir?

Mr. Isseks: Those exhibits, Your Honor, refer to requests made by Mr. Smith to the witness under date of May 14, 1929, for some action with regard to Ball Brothers in regard to their use of some kind of feeder; the witness' reply is Government's Exhibit No. 175. The witness, in the second page of the letter, says he was not optimistic about the matter.

The Witness: This is my letter, undoubtedly.

Q. Do you recall, Mr. Carter, that, in the early part of 1933, there were discussions between your company, Hartford, and Ball Brothers, with regard to a proposed limitation on the volume of fruit jars to be manufactured by Owens-Illinois annually?

A. No, I did not have any part in those negotiations.

Q. Do you remember that you were asked by Mr. C. B. Belknap to set forth your views with regard to the legality or effect of such a proposed limitation in a proposed contract?

A. I don't remember it, no.

[fol. 3066] Mr. Middleton: Just a moment. Will you fix the date, please?

Mr. Isseks: I will show him Government's Exhibits Nos. 189 and 190. February 1, 1933: They are both dated the same day. One is two pages, and one is four pages. Government's Exhibit No. 189 is addressed to Mr. C. B. Belknap, at the Biltmore Hotel, New York City, February 1, 1933.

Mr. Middleton: I wish to inquire, before this inquiry is put to the witness, as to the status of the witness in the organization at that time.

Mr. Isseks: I don't know. He signs it as vice-president.

Mr. Middleton: That is what I wanted to find out.

Mr. Isseks: This is February 1, 1933, Government's Exhibit No. 189, which is four pages; addressed to the Biltmore, and is signed: "Owens-Illinois Glass Company, Patent License Department, Henry W. Carter, vice-president;

carbon copies to Mr. Levis and Mr. Phillipps". And Government's Exhibit 190 is signed the same way.

Mr. Middleton: Mr. Carter, when did you cease being vice-president, do you recall?

A. At the annual meeting in 1933, which was usually held in April.

[fols. 3067-3068] Mr. Middleton: When, Mr. Carter, did you cease being vice-president, do you recall?

A. At the time of the annual meeting in April.

Mr. Middleton: These were written before the annual meeting?

The Witness: Yes.

Q. I show you Government's Exhibits 189 and 190. Please tell us whether you wrote those letters to Mr. Belknap. They both have a heading I believe, "Fruit Jar Limitations". 189 has got the heading, so has 190?

A. I don't recall them, but undoubtedly they are my letters.

Q. Do they refresh your recollection of your having conversation with regard to a proposed limitation by Owens of a hundred thousand gross of fruit jars per year?

A. No.

Q. Of course you wrote the letters?

A. Yes.

* * * * * * *

[fol. 3069] Mr. Isseks: At this time I would like to offer as one exhibit Government's Exhibit 646, two telegrams of same date on Owens-Illinois Glass Company stationery, both dated February 6th, 1933, but they are on the same piece of paper. I think that was done for convenience by Owens and furnished to us in that manner. Does Your Honor care to look at it? Apparently one is addressed to Waldorf, New York, and one to Kimble Glass Company, Vineland, New Jersey, signed by C. B. Belknap, addressed to the witness, stipulated by Owens as genuine at page 33 of the Stipulation. I offer them both in evidence.

The Court: They may be admitted over objection.

Thereupon, Government's Exhibit No. 646 was read to the Court by Mr. Kramer, of counsel for the government.

Q. Did you send those telegrams, sir?

A. I don't know. I don't remember anything about them.

Q. Will you look at them, please?
A. They look perfectly genuine.
Q. You had a notation on the upper right hand corner "Ball". That relates to Ball Brothers, does it not, the upper right hand corner of both telegrams?
A. I would think so.

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[fol. 3070] Mr. Isseks: At this time I wish to offer in evidence a telegram, Exhibit 647, a reply to the last exhibit. This one comes from Philadelphia, addressed to the witness at Toledo, signed C. B. Belknap, dated February 6th. There is no year on it. I think it is obviously the reply, and I [fol. 3071] offer it as the year 1933.

Q. I will ask the witness if that was the telegram he received in reply to the previous exhibit? It is stipulated as genuine by Owens-Illinois, page 22 of the Stipulation.
A. I have no recollection whatever about it. It looks genuine to me.

Mr. Isseks: We offer it in evidence.
The Court: It may be admitted.

Exhibit 647 is read by Mr. Isseks.

Q. Whose handwriting is that in the upper right hand corner of the telegram, if you know, sir?
A. I don't know. It is not mine.

Mr. Middleton: Now just a minute. Before this is read into the record, it seems to me in order to be fair we should have an understanding about it. I know Mr. Isseks does not wish to put in the record anything that is not evidence. When these papers were taken from the files of Owens in 1938, there were notations made on them in the process of collecting them, sending them, and indexing them, and putting them in volume, and that notation was placed on there at that time. Now if Mr. Isseks knew that I am sure he would not offer it as part of this exhibit to indicate at the time what the parties had in mind, or reflect upon the meaning of this paper which was written years before. Can't we reach an understanding, Mr. Isseks, if these notations were placed on it to assist in organizing [fol. 3072] these papers during the TNEC they are not competent evidence?

Mr. Isseks: Certainly the notations it is not claimed were made by the government. There is no claim before Your Honor the notations were made contemporaneously with the filing. If counsel states they were made in 1938, that is the statement, but it is not evidential by any means. When the Owens people put a notation in the upper right-hand corner whether 1933 simultaneously with the making thereof, or 1938, after an issue had arisen between the TNEC and Owens, certainly that should be received for what it is worth. I submit that is equivocable. I don't know what it means. I submit it for what it is worth, whether made by one of Owens' associates in 1938 or whether made by a file-clerk in 1933. I understand there is no claim that any of the TNEC representatives made the notation thereon.

The Court: Is there any indication as to whose handwriting it is?

Mr. Middleton: It is in the handwriting of Mr. Martin, who is here. He had the job of assembling these papers and indexing them so we could refer to them and this is one of the subjects in the TNEC hearing as relating to this suit. So we could later assemble them, catch-words such as that were placed on them. I don't think Your Honor wants to be bothered with that incompetent, irrelevant and immaterial evidence.

Mr. Isseks: I don't dispute that this young lady put that on, but how did she know how to make this notation? Cer- [fol. 3073] tainly she is an Owens employee. There is no claim the Government did it. It should be submitted for what it is worth.

The Court: The Court will have to determine, in viewing this matter in connection with arguments of counsel, whether to give it any credence or not.

Mr. Isseks: Your Honor, at this time I would like to have marked, first a document dated April 24, 1925, addressed to Mr. W. H. Boshart, and then the notation, "Belknap and Carter meeting for Mr. Marshall about O'Neill", stipulated as to genuineness by Owens-Illinois at page 9 of the stipulation.

Q. I would like to ask, Government's Exhibit 648, who the gentleman referred to by the name of Mr. Marshall, is?

A. Mr. Marshall is a Toledo lawyer who was representing Mr. O'Neill. He was trying to sell his business to us.

Q. The same gentleman who is counsel for Hartford in this case?
A. Yes.

Mr. Isseks: I offer it in evidence.
The Court: It may be admitted over objection.

(Exhibit 648 is read by Mr. Lewis.)

Q. Mr. Carter, did you write that memorandum, sir?
A. I don't recall it but I have no doubt that I wrote it.

Mr. Isseks: At this time I offer Government's Exhibit 649, memorandum dated May 16, 1925, addressed to Mr. Boshart, regarding the O'Neill machine and patent, and [fol. 3074] signed by the witness, stipulated as to genuineness by the Owens-Illinois Glass Company at page 9 of the stipulation.
The Court: It may be admitted, over objection.

(Mr. Apsey reads Government's Exhibit 649.)

Q. Did you write that letter, Mr. Carter?
A. I think I did. Yes.

Mr. Isseks: Your Honor, at this time I would like to offer Government's Exhibit——
Mr. Middleton: May I just, for the clarity of the record, call the Court's attention to the fact the O'Neill purchase was made eight years subsequent to the writing of this letter and the circumstances at the time of the O'Neill purchase were different, and I say this just so Your Honor will have this in mind.
Mr. Isseks: It is the government's position it was all part of the scheme, starting April 9, 1924, to get everybody in, as they finally succeeded in doing.
I offer at this time, Government's Exhibit 650, a memorandum written by the witness, dated September 10, 1925, addressed to Mr. Boshart, "Value of O'Neill patent rights", stipulated as to genuineness by Owens-Illinois at page 10 of the stipulation.
The Court: It may be admitted over objection.

(Exhibit 650 read by Mr. Kramer.)

Q. Did you write that memorandum, sir?
A. Yes.

Mr. Haight: I think it should be stated to Your Honor [fol. 3075] the Brookfield Patent referred to was not the one that was used in litigation against Hartford by Owens and Hazel. It is another Brookfield patent. I thought Your Honor should know that so there should be no confusion.

(Remarks by counsel off of the record.)

The Court: The bailiff may recess court until 10 o'clock tomorrow.

(Night adjournment.)

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[fol. 3076] (At 10 o'clock a. m., Friday, April 4, 1941, the trial was resumed.)

Mr. Wall: There is a slight error in the transcript, page 1843, question as to who Mr. Marshall was, who is referred to in one exhibit. The answer is, in substance, that he is a Toledo lawyer representing Mr. O'Neill. I think the witness intended, and the fact is, he was representing Mr. O'Neill at the time of the transactions then being discussed, and he does not now,—and there is no connection between the employment at the two different times.

Mr. Isseks: I think that is true, but I think also Mr. Wall will concede in 1933, in connection with the final deal, Mr. Marshall represented Mr. O'Neill.

Mr. Wall: At the time of the sale of some patents or other to Hartford.

Mr. Isseks: Whatever it was.

Mr. Wall: And Owens, I believe it was.

Mr. Isseks: We have a slight correction. I think there will be others, as I indicated before, at the end of the case. There is a reference on page 1818 to "Clark" when it should be to "Hartford".

The Court: All right.

Henry W. Carter resumed the stand.

Q. Do you recall there was a discussion as early as 1925 about the O'Neill business? We have had some exhibits yesterday to that effect.

A. O'Neill tried to sell us his business at that time.

[fol. 3077] Q. And you were interested in buying at that time, weren't you?

A. We were considering it.

Q. And the deal didn't go through?

A. No, I advised against it because I couldn't see any patent values there.

Q. Then you remember later on Mr. O'Neill developed a machine which has been called here, for convenience's sake, the Knox-O'Neill automatic machine, which was in the nature of something like a suction machine and vacuum machine?

A. I remember it very well.

Q. And do you remember there were various negotiations, beginning sometime the latter part of '28 and going through 1929, between Hartford and Owens as a group, and the Knox-O'Neill people as a group?

A. I think there were.

Q. And nothing came of those negotiations?

A. Well, I don't remember any particular negotiations but nothing came of them at the time, if I remember correctly. Somewhere along there we brought suit against O'Neill.

Q. Do you remember there were a lot of conferences between the Owens people and the Hartford people with regard to the consideration of buying out the Knox-O'Neill business, these conferences taking place in 1929?

A. No, I don't remember that.

Q. Have no recollection whatsoever. Do you remember [fol. 3078] there were discussions at the end of 1931 with regard to the facts that your company was again interested in the Knox-O-Neill business?

A. I suppose you mean Mr. O'Neill's business. I don't know what you mean by Knox-O'Neill's business.

Q. I mean Mr. O'Neill's business, that is right.

A. There were negotiations along that O'Neill wanted to sell patents, was trying to, all the time.

Q. I show you Government's Exhibit 262, which is a letter dated November 7, 1931, written by you to Mr. F. Goodwin Smith, with a carbon copy of Mr. Levis,—I believe there is a stipulation on this document, at least the copy I have has a certificate by Mr. Martin,—in which you referred to an option given in 1931 to one Harry Collin with regard to the O'Neill properties and patents.

A. I don't remember this letter but I have no doubt that I wrote it.

Q. Does it refresh your recollection there was an option taken by Mr. Harry Collin in the fall of 1931 with regard to the O'Neill patents and properties?

A. No, I have no recollection of that.

Q. Your mind is an absolute blank?

A. I have forgotten it entirely. I don't remember it now.

Q. That is all right.

Mr. Middleton: I object, Your Honor, to this question: "Your mind is a blank?" The witness doesn't say his mind is a blank. He says he doesn't remember a certain thing. I don't think it is fair to throw out that insinuation [fol. 3079] all the time. I don't want to object to it, but if Mr. Isseks is reminded it carries a meaning he doesn't intend, I don't believe he will use it.

Mr. Isseks: There is no insidious intention whatever. All I want to make clear is that the witness doesn't recall on direct examination, so I won't bother about asking him a half a dozen questions, because if he doesn't remember it for any purpose whatsoever, he won't remember it today or tomorrow.

Mr. Middleton: I don't think it is fair to say the man's mind is a blank. That means a good deal more than is fair to put in the question. He doesn't remember a specific thing; he does remember a lot about the transaction but not that particular thing, he doesn't remember that particular thing, his mind is not a blank.

Mr. Isseks: I understood the witness to say definitely that he has forgotten this thing completely, has no recollection whatsoever about it, doesn't remember even writing the letter, but he won't deny it. That is what he said.

The Court: You may proceed.

Q. Who was this gentleman referred to in your letter, Government's Exhibit 262, called Harry Collin?

A. He is a member of the firm of Collin & Nortin, brokers and financial men. He at one time also was a director in the Owens Bottle Company.

Q. At that time?

A. And I think he is a director now in the Owens-Illinois [fol. 3080] Glass Company.

Q. This was 1931. That was the Owens-Illinois Company, too, at that time?

A. Yes.

Q. Of course, long prior to that time he was a director, was he not?

A. In the Owens Bottle Company.

Q. And he is a resident of Toledo, is he not, out over the hills somewhere in this part of the country?

A. Yes.

Q. Do you remember there were talks, even after that time—this was November 7, 1931—do you remember shortly thereafter you took your new assistant, Mr. Naylor, to Hartford and had a long talk with Mr. Goodwin Smith and Mr. Knox Smith about this very situation, the O'Neill situation?

Mr. Middleton: I object to the characterization of Mr. Naylor as his "new assistant".

Q. Well, when did Mr. Naylor become your assistant?

Mr. Middleton: Was he ever his assistant? That is what I object to.

Mr. Isseks: All right.

Q. Was Mr. Naylor ever your assistant?

A. Mr. Naylor was a young lawyer who was brought into our organization by Mr. Levis about 1932, I would think, and he came into my department.

Q. Is it a fair statement to say when he came in he became your assistant?

A. I would think so.

[fol. 3081] Q. Is it a fact, and a fair statement, to say that when he came in in 1931 he was your new assistant?

A. Well, he was quite new in the business.

Q. And he certainly was an assistant?

A. Yes, he was.

Mr. Isseks: Is that all right, Mr. Middleton, now?

Mr. Middleton: Not altogether, because you characterized Mr. Naylor the other day as the one who succeeded Mr. Carter, which is not the fact. I want the record straight. Mr. Naylor didn't succeed Mr. Carter in charge of the patent department. I also want you to keep the situation in mind that he was a young lawyer in the general patent department, and he is still in the employ of the company, but I don't want you to magnify his importance.

Q. Was Mr. Naylor your new assistant in the fall of 1931?
A. I don't remember when he came in, but it was along about that time.
Q. When he came in he became your new assistant?
A. Well, I would think so.

Mr. Middleton: My office-boy is my assistant, too, I think.

Q. Was Mr. Naylor your office-boy?
A. Well, his duties there for a time were very minor.
Q. Did you take him to Hartford with you?
A. I don't remember.
Q. You don't remember ever taking him to Hartford?
[fol. 3082] A. No, I don't remember taking him to Hartford.
Q. Would you say he never went to Hartford with you?
A. No, I wouldn't say so.
Q. You just don't remember at all?
A. We had so many negotiations back and forth, involving so many people, I wouldn't undertake to say anything about who was where or when.
Q. Now, don't you remember you took Mr. Naylor to Hartford on one occasion and had a long conference with Mr. Goodwin Smith and Mr. Knox Smith about the matter of the O'Neill machine and the Lynch machine?
A. I don't remember of Mr. Naylor being in that proposition at all. I would say at that time that Mr. Naylor had no background on which to be of any consequence.
Q. But you don't remember taking him there?
A. He might have carried my books or bags or something of that kind.
Q. Do you remember going, yourself, in connection with the Lynch and O'Neill matter?
A. No.
Q. Don't you remember going to Hartford in the fall of 1931 and suggesting it might be a good idea of having O'Neill sue Lynch?
A. No.
Q. Don't you remember there was a discussion at that time between you and Mr. Goodwin Smith with regard to the possible acquisition of the assets of the O'Neill Company for a half a million dollars net?
[fol. 3083] A. I remember Mr. Marshall suggested we might get O'Neill for half a million dollars or thereabouts.

Q. Sometime in the fall of 1931?

A. And afterwards he offered it for much less. I don't remember whether it was the fall of 1931 or not. You see, Mr. Marshall tried to sell us these machines from about '25 or '26 on. I distinctly remember going over with Mr. Boshart to Mr. O'Neill's plant and looking at his machines and going through his patent applications, which he turned over to us through his attorney, Mr. Kirk, and through various negotiations during that five years, and when Mr. O'Neill developed a suction type machine, which he hadn't had, and which we never heard of until, I think, about 1928 or '29, hadn't heard of it first, we became very much more interested in the proposition, because he had some things there that were of value, particularly the stationary pot, which we had been trying to develop for years but hadn't succeeded in getting, and that gave him a real value. And from that time on the negotiations took on a more serious complexion; but I cannot tell you, Mr. Isseks,—there was a long series of meetings, and it involved Hartford more or less, because O'Neill's old machines were all of the Hartford type machines, that is to say they were feeder machines, or hand-fed machines, and not suction machines.

Q. Anything else?

A. That is all.

Q. You do remember that finally, in 1933, there was an [fol. 3084] option to buy O'Neill's business for $600,000, and later on it was reduced to $500,000, and Hartford purchased certain assets for which it agreed to pay over $100,000, or an annuity?

A. In general only. That deal occurred after Mr. Belknap had taken over my duties, largely, principally, and I had nothing to do with the deal at that time. I heard about it in a general way, but I never knew what the particular considerations were.

Q. Now, I direct your attention to a period prior to your giving up your duties to Mr. C. B. Belknap, namely about a year and a half prior to the deal, which was consummated, as I recall it, in April or May, 1933; don't you remember going to Hartford and talking to Messrs. Goodwin Smith and Knox Smith about the possibility of buying all the assets of the O'Neill people for $700,000, of which you could salvage $200,000 and pay a net of $500,000?

A. No, I have no recollection of it.

Q. I will show you Government's Exhibit 277 for identification, as to which objection has been sustained, and I will ask you whether it refreshes your recollection. It is an excerpt from a diary entry of Herbert Knox Smith, dated November 11, 1931. I will ask you whether you recall having a conference on Armistice Day in 1931 with the gentlemen referred to therein, and with one Naylor, characterized as an assistant of yours by you, and tell us whether that does not refresh your recollection?

Mr. Middleton: I wondered where you got that "new [fol. 3085] assistant". I see it is a dead man's diary.

Mr. Isseks: I didn't make it up.

Mr. Middleton: First I ever heard of it.

A. (After witness refers to exhibit last mentioned.) No, I have no recollection of this meeting, and this does not refresh my recollection of any such meeting. Of course the subject-matter of the O'Neill purchase was discussed at various times, and that is all I can say about it.

Q. The memorandum does not refresh your recollection at all?

A. No.

Q. You would not deny that what is set forth in the memorandum, the diary entry, took place?

A. No; it might be quite correct.

Q. You knew Mr. Knox Smith, did you not?

A. Oh, very well.

Q. He was a man of accuracy, was he not?

A. He was a very able lawyer and a very honest man.

Q. And a man of great accuracy, was he not?

Mr. Middleton: I object to the question.

The Court: Overruled. He may answer.

A. Well, I don't know.

Q. In your experience, please, sir, I think it is a fair question to ask you,—you are a man of capabilities yourself, are you not?

A. I will leave you the judge of that.

Q. I ask you whether you didn't consider Mr. Knox Smith, a man you knew for many years, as a man of great accuracy?

[fol. 3086] A. I never heard a man described in my life as a man of great accuracy. I don't exactly know what your

meaning is. He was an honest man and a good lawyer, and intelligent in his use of language. Now, when he said a thing, I accept it as sound, as he saw it.

Q. And accurate?

A. And accurate as he saw it.

Q. Thank you very much.

Mr. Isseks: At this time, Your Honor, I am not going to renew my offer of the exhibit as to which Your Honor has sustained an objection,—namely Exhibit 277.

At this time, Your Honor, I offer as Exhibit 651, a photostatic copy of a memorandum dated October 23, 1930, addressed to F. Goodwin Smith, signed Owens-Illinois Glass Company, Henry W. Carter, vice-president, stipulated as to genuineness by Owens-Illinois at page 18 of the stipulation.

Mr. Haight: Is it a memorandum or letter?

Mr. Isseks: It is a letter addressed to Mr. Smith by the witness. I offer it in evidence.

The Court: It may be admitted, over objection.

(Government's Exhibit 651 read by Mr. Lewis.)

Q. You wrote that letter, did you not?

A. I don't remember it but I have no doubt that I wrote it.

Mr. Isseks: At that time I would like to offer the reply, dated October 27, 1930, addressed to Mr. Carter by Mr. F. Goodwin Smith, stipulated as to genuineness by Owens-Illinois Glass Company at page 18, marked Government's Exhibit 652.

[fol. 3087] The Court: It may be admitted, over objection.

(Government's Exhibit 652 read by Mr. Kramer.)

Mr. Isseks: Your Honor, at this time I would like to offer Government's Exhibit 653, a memorandum dated October 24, 1930, addressed to Mr. Levis, signed by the witness, stipulated as to genuineness by Owens-Illinois at page 18 of the stipulation, apparently signed "Patent and Licensing Department". I will ask about it. It is signed, "Patent and Licensing Department" and it has "EC" in the corner; stipulated as to genuine--ss by Owens-Illinois.

The Court: It may be admitted, over objection.

Q. Before I have it read, I would like to have the witness identify the signature on Exhibit 652. Is that the signature of F. Goodwin Smith, sir?

A. It looks to me like it.

(Government's Exhibit 653 read by Mr. Lewis.)

Q. Did you write that memorandum, sir? (Referring to Exhibit 653.)

A. I don't know. I think probably I did but I don't recollect it at all.

Q. It sounds like you?

A. Yes, it sounds like me.

Q. There is a reference to I. P. C. What is "I. P. C."?

A. I would assume it stood for Illinois-Pacific.

Q. At that time a subsidiary of your company?

A. What is the date?

Q. 1930.

[fol. 3088] A. No, I don't think so. I think that was an independent business at that time. I think we bought it later but I cannot tell exactly.

Mr. Isseks: At this time I would like to offer in evidence Government's Exhibit 654, a letter dated December 20, 1930, to F. Goodwin Smith, re "Turner situation", signed by the witness, "Vice-president in charge of the Patent and Licensing Department", stipulated as to genuineness by Owens-Illinois at page 18 of the stipulation.

The Court: It may be admitted.

(Government's Exhibit 654 read by Mr. Kramer.)

Q. Did you get the letter, sir?

A. I don't remember the letter.

Q. You wrote that memorandum to Mr. Levis, did you not; you wrote the particular letter which you have in front of you, Government's Exhibit 654?

A. I have no doubt I wrote it; I don't remember.

Q. Did you get the letter from Mr. Smith referred to in here?

A. I don't know, except as that letter states.

Q. Did you hear from Mr. Smith about the Monongah situation?

A. I haven't the slightest recollection.

Q. I show you Government's Exhibit 276, dated May 26, 1931, addressed to Mr. Levis, regarding a talk with Goodwin Smith about Monongah. I ask you whether you wrote that memorandum to Mr. Levis?

If Your Honor will recall, this was only stipulated as coming from the files of Hartford. It is because of that I [fol. 3089] want the witness to identify it.

Mr. Fuller: May I inquire, was Exhibit 276 received for a limited purpose?

The Court: They all have been.

Mr. Isseks: At page 966, "Admitted for the purpose of establishing the state of mind of Henry W. Carter and the company which he represented."

The Court: That is correct.

A. (After witness refers to exhibit.) I have no doubt I wrote this letter.

Q. I now hand you Government's Exhibit 286, which is photostatic copy of a carbon copy of a letter dated June 11, 1931, which you wrote Mr. Levis at Toledo, signed at the end, "H. W. C.", and ask you whether you wrote that letter? That, too, relates to the same subject-matter, namely, the Monongah situation.

A. (After referring to letter.) I have no doubt that I wrote it.

Q. Now, Mr. Carter, do you remember that shortly after the April 9, 1924, contract between Hartford and Owens, the question came up about the Headley & Thompson applications, owned by Whitall Tatum?

A. Yes, I remember that.

Q. Do you remember that you prepared a memorandum with regard to the value of those Headley & Thompson applications?

A. No, I don't remember but I very likely did.

Q. Do you remember you prepared it at Hartford after discussing the matter and going over the applications at Hartford?

[fol. 3090] A. I don't remember.

Q. I show you Government's Exhibit 296, which is dated Hartford, Connecticut, and has on the top, "Mr. Carter has original. I have copy. Jul 23, '24. Hatch.", which has been received in evidence. I will ask you whether you can tell by looking at it that that is a memorandum you prepared on or about the date indicated?

A. I recognize my signature at the end of the article and I have no doubt that I prepared it. The Headley & Thompson applications came on us like a thunderbolt, and we were very much——

Q. Disturbed about it?

A. Yes, disturbed—exercised over the possibilities.

Q. You were kind of worried about it, weren't you?

A. Yes, we were worried about it. They had copied certain claims from one of our patents we had taken out on our Graham type machine, got into interference with us, and it turned out that their dates ran very much back of ours. Interferences are decided primarily on the matter of dates of invention, and we couldn't move to dissolve the interference because we had taken claims out in our patents; we were estopped. I am speaking about Owens-Bottle. We were threatened with an entire stoppage, prohibition, of our machine development, our Graham machine development which had cost us many hundreds of thousands of dollars.

Q. Anything else you want to say?

A. Simply that we were very much worried about it.

Q. Do you want to say anything else about the Headley [fol. 3091] & Thompson applications?

A. I would say that Hartford was perhaps just as much worried as we were, because their I. S. machine, their narrow-neck machine, in fact all their machine developments were threatened by this. Mr. Byrnes, who was attorney for Headley & Thompson, made this direct statement, that he would issue those patents with claims which would cover every possible form of feeder-fed machine, including the Lynch and O'Neill, the Owens, Owens-Graham type machine, and all machines made by Hartford. And I am frank to say that I guess he did it.

Q. See if I cannot find out what the situation was. Your company, the Owens Company, had certain applications on forming machines, did they not?

A. Patent, a patent issued, I think, in 1922, the Graham patent.

Q. And this application showed priority to your patent, did it not, on its face? That is what you said, I believe.

A. No. No, it turned out that the Headley & Thompson application showed priority.

Q. That is what I meant.

A. Carried their date back about five years beyond any date we had in that connection.

Mr. Haight: That is not the fact. They took it back by testimony.

Mr. Isseks: I understand.

Q. In other words, Headley & Thompson claimed priority, you said, of five years?

[fol. 3092] A. Yes.

Q. And I think you volunteered that Hartford was also worried about the matter?

A. Yes, Hartford was involved in this same interference.

Q. Of course, you were in contact with Hartford under your April 9, 1924, agreement?

A. We were in contact with Hartford before that on that proposition because they were involved in this same interference. It was a three-party, as I remember it, a three-party interference, with Headley & Thompson sitting pretty by having dates that ran back, they claimed, to 1911, and they had a court holding, in a previous interference of theirs, in which we had no part, that gave them the benefit of that date. We couldn't reach it anywhere nearly. And I asked Hartford what their situation was, and they said they couldn't reach it in any way.

Q. So that Hartford had patent applications which were also subsequent to this claim of Headley & Thompson?

A. Yes.

Q. And I think you said O'Neill and Lynch were involved in some way; how were they involved?

A. They were only involved in the sense that their machines would have been controlled, according to Mr. Byrnes, by these patents, these Headley & Thompson patents, when they were issued. Lynch fought the claim; they subsequently got in interference with Lynch, and Lynch fought the claim for about five years, at very large expense, and they finally beat Lynch, so Headley & Thompson were sitting pretty.

[fol. 3093] Q. This all related to forming machines, did it not?

A. Yes, sir.

Q. Of course you cannot make a bottle without a forming machine, can you?

A. No. You can blow bottles by hand.

Q. As far as automatic machinery is concerned, you cannot make any bottles without having forming machines, you say?

A. That is correct.

Q. If the Headley & Thompson applications were unsuccessful, as you said, they would read on the Owens forming machines, the Hartford forming machines, and the Lynch forming machines; is that not right?

A. Yes, sir.

Q. They would be in position perhaps to control all forming machines used automatically?

Mr. Williams: You mean the Owens suction? If you meant that to mean the Owens suction, give the witness a chance to differentiate.

A. The Graham type of Owens forming machine was not a suction machine.

Q. Was the Graham type of Owens forming machine ever used extensively by the Owens people?

A. I would not say it was used extensively, but we were paying a great deal of attention to that development. We were using it somewhat.

Q. The Headley & Thompson applications, if successful, would read on all forming machines used in connection with feeder devices, would it not?

[fol. 3094] A. That was Mr. Byrnes' contention, and we realized that there was a basis for his argument or statement.

Q. Of course, if you were to fight him and beat him successfully, then there would not be any claim by anybody in connection with the forming machines, in that you could show prior art, and the thing would become something that could be used by everybody?

A. We could not show any prior art, that is, Owens Bottle could not, because the foundation of the interference were the claims of our patent; and we could not deny our own claims.

Q. Anything else?

A. Of course if there had been an issuance of the Headley & Thompson patents, and suit brought against us, then we could have made a defense.

Q. Of prior art?

A. Of prior art; but we would have been in a sour grapes position; and the chances of our being defeated were very large. Although I had little confidence at that time in Mr. Byrnes' position, as a matter of fact he went on and the patent office and court agreed with him.

Q. What court?

A. The Court of Appeals of the District of Columbia.

Q. You mean Patent Appeals?

A. In the interference which he ultimately had with Lynch on this same issue.

Q. There was not any patent infringement?

[fol. 3095] A. No; but the issues were very much the same in interference. Headley & Thompson did make a very severe issue there, a very determined issue, on the question of the patentability of those issues, and the Court of Appeals decided that in Headley & Thompson's favor.

Q. Headley & Thompson did not work for Owens, did they, at any time?

A. No, never at any time.

Q. So far as you know, Headley & Thompson never worked for Hartford?

A. I am very sure they never did.

Q. A couple of boys down at Whitall-Tatum in the southeast, down around Baltimore.

A. I cannot say whether they were boys or not; but they were employes of Whitall-Tatum, I always understood.

Q. This was a patent application owned by a manufacturer of glassware, Whitall-Tatum?

A. Yes, sir.

Q. You felt quite worried about it?

A. Yes, sir.

Q. You felt that something had to be done about it, did you not?

A. Of course something had to be done about it.

Q. Because they might control all the forming machines which your company used, and which all the other Hartford licensees were using; is that right?

A. That was possible.

Q. Of course under the Hartford system you had to pay [fol. 3096] royalties in connection with forming machines, did you not?

A. Yes, sir.

Q. Under the Lynch system, you did not?

A. I don't know what you mean.

Q. The Lynch was selling its forming machines?

A. Lynch sold its forming machines, yes.

Q. Ed. Miller sold his forming machines?

A. Yes, sir.

Q. You were not selling your forming machines, were you?

A. We sold some, yes.

Q. Outright?

A. Yes, sir.

Q. To whom?
A. We sold some to go to Sweden.
Q. I am talking about the United States of America.
A. Some to go to Cuba; some to go to Brazil.
Q. Any to China?
A. No, sir.
Q. Did you sell any in the United States?
A. I don't think we sold any in the United States.
Q. You never sold any of your equipment in the United States; you know that, do you not; you always licensed it and collected the royalty, if you could?
A. The licensing period of our organization had practically stopped before I came with the company in 1920. My knowledge of that situation is from our books, and we [fol. 3097] did sell some of our machines.
Q. In the United States?
A. Yes, sir.
Q. Forming machines?
A. Yes, sir.
Q. After you came with the company in 1920?
A. No. As I say, that practically disappeared at that time.
Q. You did not sell any of these Graham forming machines since you have been with the company, did you?
A. No. I don't think anybody wanted them.
Q. You did not sell any forming machines as far as you know since you came with the company?
A. No, only licensed them.
Q. Hartford did not sell its forming machines, as far as you know?
A. I would not know that. They had out quite a large number of machines, I know, to the Illinois Glass Company, in the early days; but on what terms they disposed of them, I don't know.
Q. You don't know whether they were sold or licensed?
A. No, sir.
Q. Your company took some forming machines from Hartford, did they not?
A. Yes, the I. S. Machines.
Q. And they paid royalty, did they not?
A. I cannot tell you whether they did or not.
Q. They do not buy them outright, do they?
[fol. 3098] A. The title remains with Hartford, anyway.

Q. You pay a licensee, and, under certain circumstances, you pay a royalty, do you not?

A. Really, I could not tell you what our arrangements are.

Q. In any event, back in 1924 you two companies were worried about the Headley & Thompson applications, which were owned by Whitall-Tatum?

A. Yes, sir.

Mr. Isseks: Your Honor, at this time I should like to offer as Government's Exhibit No. 655 a letter to Milans & Milans, McGill Building, Washington, D. C.: "Re: Headley & Thompson Interferences", signed R. D. Brown. I call attention to the bottom where it says, "A copy to Mr. Carter". It is on the stationery of Hartford-Empire. It is dated August 29, 1924. It is stipulated by Owens as coming from its file. The signature is on the copy, Your Honor.

Q. Do you recognize Mr. Brown's signature?

A. Yes, sir.

Mr. Isseks: I offer it in evidence, Your Honor.

The Court: It may be admitted, over objection.

Thereupon, Government's Exhibit No. 655 was read to the Court by Mr. Lewis, of counsel for the government.

Q. Did you receive that copy, sir?

A. I have no recollection of it.

Q. You do not doubt it?

A. I think probably I did.

[fol. 3099] Q. Did I understand you correctly to say if you were in position to show prior art, it might result in Headley & Thompson not getting a patent; and therefore, all these forming machines would be free from any patent control?

A. We had that possible defense; whether it would be successful or not, we had that possible defense, if the interference had not been based on our own patent claims.

Q. But someone else, like Lynch, if he could have the information and show prior art, he could go ahead, could he not?

A. He did have the information. He did go ahead, and got beaten.

Q. But if he had all the information available, namely, your history——

A. He had all the information, so far as I know.

Q. If he had all the information available to your company, he might be in position to make a little further progress; is that not so?

A. I don't know that that is so.

Q. Did you give him all the information available to you?

A. I think so.

Q. You think so?

A. Yes, sir.

Q. Is there any doubt about it in your mind?

A. I don't remember a thing about it.

Q. In other words, you don't remember anything about it?

[fol. 3100] A. That is, not anything about the details of the situation. I remember the general situation very well.

Q. I mean about giving information to Lynch?

A. When it comes to a question of this Lynch interference, I don't know anything about it; I don't remember anything about it; we had nothing to do with it.

Q. Do you not remember that you were asked to give information to Lynch with regard to the prior art?

A. I remember that one of the attorneys for Lynch visited us,—visited me.

Q. And asked you for the information about the prior art?

A. That would be a very natural subject. I don't remember what we talked about.

Q. Do you not remember that you then took the matter up with Colonel Brown, and it was decided not to give the information?

A. No, I don't remember a thing about that.

Q. You do not remember that at all?

A. Not at all.

Q. It might have affected the situation if you had given the information?

A. The moon might have been made of green cheese.

Q. We don't know now, do we?

A. I don't know anything about it.

Q. I am talking about the moon.

A. It is purely speculative.

Mr. Isseks: Your Honor, at this time I offer Govern-

[fol. 3101] ment's Exhibit 656, a photostat of an original letter, dated June 21, 1927, on the stationery of Owens Bottle Company, addressed to Mr. Robson Brown. It says,

"My dear Mr. Smith"—apparently a mistake. It is signed by the witness. It is stipulated as to genuineness by Hartford.

Q. I ask you if that is your signature at the last page?
A. It is.

Mr. Isseks: I offer it, Your Honor.
The Court: It may be admitted.

Thereupon, Government's Exhibit No. 656 was read to the Court by Mr. Kramer, of counsel for the government.

Q. You wrote that letter, did you not?
A. I have no doubt I wrote it. I don't remember it.
Q. Before this time, and subsequent to the memorandum you wrote which is Government's Exhibit No. 296, a memorandum you wrote in 1924, Hartford had taken an option on Headley & Thompson, had they not?
A. There was such an option taken, but when it was taken I could not tell you.
Q. It was prior to the date you were talking about the onerous option in this letter I just showed you?
A. I would assume it was prior to that date.
Q. These interferences you mentioned in your testimony were, of course, prior to the date of the option. You said they were earlier in 1922?
A. No, I said I thought the patent issued in 1922, and this interference followed that.
[fol. 3102] Q. It was a three-party interference?
A. Yes, sir.
Q. What did your company do about your interference with Headley and Thompson?
A. That was settled by the option agreement. The whole interference situation was with Hartford.
Q. You dropped your interference?
A. I don't remember what became technically of the interference; in effect it was dropped.
Q. The same way as to the Hartford interference?
A. I would think so. I don't remember what the situation was. We did not contest the interference, at any rate.
Q. After the option, you dropped the interference?
A. Yes, sir.
Q. You said something about Evansville: what is Evansville?

A. Evansville was the seat of the Graham Glass Company's business.

Q. Owens owned it at the time you wrote this letter, did they not?

A. I think Owens bought it in 1916.

Mr. Middleton: Bought the Graham Company, you mean?

Mr. Isseks: The Graham Company.

Q. When this Miller came in and said he represented Lynch, did you say, "My dear sir, I am sorry; we are participants in an option with the Headley & Thompson applications"?

A. I don't remember anything about the facts, except that he did come in to see us.

[fol. 3103] Q. Did you not tell him about the fact?

A. I don't know what I told him.

Mr. Middleton: Is it claimed that there was any obligation to?

Mr. Isseks: I did not say there was any obligation. I am asking for a fact.

Mr. Middleton: Unless there was an obligation, I think we should object to this line of questioning. It is going afield.

The Court: Overruled.

Mr. Middleton: I submit, seriously, Mr. Isseks——

The Court: The objection is overruled.

Q. Did you tell these gentlemen that your company paid for the cost of the option Hartford had with Whitall-Tatum?

Mr. Middleton: Objection.

The Court: Overruled.

A. All I know is just what the letter says. I have no recollection of it.

(Morning recess.)

The Court: Proceed.

Mr. Isseks: Your Honor, we are calling Mr. Day out of turn. Mr. Apsey will examine him.

The Court: You may proceed.

Thereupon, the government called as a witness, George E. Day, who, being duly sworn, testified:

[fol. 3104] Direct examination.

By Mr. Apsey:

Q. Please state your name and address?
A. George E. Day; Detroit, Michigan.
Q. What is your occupation?
A. Attorney-at-law.
Q. How long have you been an attorney, Mr. Day?
A. About ten years.
Q. You are a member of the Michigan Bar?
A. That is right.
Q. At some time did you become interested in going into the glass business?
A. Clients of mine and myself, in 1935.
Q. Tell us who was interested with you in that.
A. Mr. Charles Clippert, of the city of Detroit, who was connected with the Clippert Brick Company, and the Goebel Brewing Company.
Q. What was his connection with those companies?
A. President of the Clippert Brick Company, and vice-president of the Goebel Brewing Company.
Q. Who else was interested in the enterprise?
A. Mr. Harry Howard, an employe of ours; and Mr. Walter Helmel.
Q. Tell us about Mr. Howard; what was his capacity?
A. Mr. Howard has been in the glass business all of his life. He came to us as an experienced glass man, and we retained him.
Q. What about Mr. Helmel?
A. Mr. Helmel was vice-president of the Motor Prod-
[fol. 3105] ucts Corporation, of Detroit.
Q. Where was this glass business to be located?
A. The plant was to be located in Trenton, Michigan, which is about 20 miles south of the city of Detroit.
Q. What were the considerations which influenced you in selecting Trenton?
A. The reason for the location was because of the availability of the raw materials, going into the making up of glass: Silica Sand nearby, and soda ash, et cetera, from the city of Wyandotte.

Q. Were there any other considerations?

A. Another main consideration was the furnishing of waste gas of the Socony Vacuum Oil Company, which we could have obtained at a very reasonable rate.

Q. How far is Trenton from the city of Detroit?

A. About 20 miles.

Q. Did you consider the matter of market for your wares?

A. Yes, we did. Detroit was the market. We could market our products without railroad, trucking the product in there at a less cost.

Q. Were there any other market considerations with respect to the city of Detroit which you took into consideration?

A. Our entire market was Detroit. The capacity of our plant would be taken up in the city.

Q. Were there prospects of a good sale of glassware in Detroit?

A. We had nearly the capacity of our plant tenta- [fol. 3106] tively sold, without solicitation, from two or three sources themselves. They were the Goebel Brewing Company, the Trenton Distillery Company, which was in the city of Trenton, and two or three other brewers in the city of Detroit who had offered the statement that they would be willing to buy from us.

Q. What kind of glassware did you propose to manufacture?

A. Principally, beer bottles.

Q. And there are numerous breweries in Detroit?

A. Several, yes.

Q. Did you have other lines of ware in mind which you might manufacture?

A. Of course we took into consideration Park Davis & Co. pharmaceutical ware, and milk bottles.

Q. Is Park Davis & Co. located in Detroit?

A. The city of Detroit.

Q. They are manufacturers of pharmaceutical supplies?

A. Yes, sir.

Q. Are they large manufacturers?

A. I believe, the largest of its kind.

Q. What other did you take into consideration?

A. Milk bottles; but our principal interest was beer bottles.

Q. What was the milk bottle situation in the Detroit market?

A. I would not care to say what that condition was. I know we could have sold milk bottles, because one of the men originally interested in this was in the milk business.

[fol. 3107] Q. Were there many companies selling milk bottles in Detroit?

A. Only one that I know of, and that was either Owens-Illinois or one of its subsidiaries.

Q. In March of 1935, to what extent had your organization progressed?

A. We had progressed to the point that we found out we would have to have a permit from the NRA which was then in effect.

Q. Had you obtained assets that you would need to operate the business?

A. Principally we had, yes.

Q. Tell us what you had gathered together in that way?

A. We had two Lynch machines, and one O'Neill—as I recall now—forming machines; feeders that went with the machine, with the O'Neill machine; and a large amount of small necessary equipment for the plant. However, we did not have lehrs at that time.

Q. What did you have in the way of capital?

A. About $100,000.

Q. Did you have your site selected?

A. We did have the site. By the way, that site was to be furnished by Mr. Walter Haas. In other words, the site was to be purchased from him in the city of Trenton.

Q. Who was Mr. Haas?

A. President of the Goebel Brewing Company.

Q. They were to be one of your customers?

A. One of our customers, as well as a stockholder.

[fol. 3108] Q. What other customers did you have lined up? I think you said you had——

A. The Tivoli Brewing Company and the Trenton Distillery.

Q. About how much capacity did you plan to have in your plant?

A. I believe that was set at about 450 cars a year.

Q. How much of that was already taken up in the orders you say you had?

A. They were not firm orders; they were offers by these

customers to purchase all requirements from us; and that was about 400 cars.

Q. About 400 cars per year?

A. That is right.

Q. With everything lined up in this way, why did you not go ahead at that time and start manufacturing?

A. Because we found it was necessary to obtain a license agreement under the patents to operate these machines.

Q. Were any efforts made to obtain such license?

A. There was an effort made. We contacted Hartford originally through their employe, Mr. Schwenzfier.

Q. Before we go into that, was any effort made to obtain a license for the operation of your O'Neill machine?

A. There was an effort made, and we determined it had been sold to Owens-Illinois.

Q. What had been sold to Owens-Illinois?

A. The company itself.

Q. The O'Neill Company?

A. That is right.

[fol. 3109] Q. Owens-Illinois would, I take it, be one of your competitors?

A. That is right.

Q. Was anything further done to get a license on the O'Neill machine?

A. Not from O'Neill, no.

Q. About when was it you had contact with Mr. Schwenzfier?

A. The latter part of 1935, Mr. Schwenzfier visited my office.

Q. Who was Mr. Schwenzfier?

A. An employe, and, I understand, an engineer for the Hartford-Empire Company. He had prior to that been with the old Owens Glass Company, I think.

Q. You say you took up with him the matters of a Hartford license?

A. That is right.

Q. Tell us what you did from that time on towards getting a Hartford license.

A. Mr. Schwenzfier originally came to my office, knowing this group of men were interested in the formation of a glass company. He visited my office with the purpose in mind of advising us that it was necessary to obtain a license agreement before we could operate. He offered to advise

his company of our desire to get into the business. We gave him a prospectus or a physical set-up of our proposed company, which he forwarded to his company.

[fol. 3110] Following that, I made a direct contact with Hartford-Empire through correspondence which eventually led up to a visit to Hartford.

Q. I show you Government's Exhibit 496 and ask if that is a carbon of a letter you sent to Hartford-Empire Company?

A. That is.

Mr. Apsey: This letter, Your Honor, has already been read in evidence. It is a letter to the Hartford-Empire Company to the witness, attention of Mr. Pease.

The Court: It was not read at that time.

Mr. Apsey: It was read later, I believe.

Q. You state at the beginning of this letter,—"Replying to your letter of January 24, relative to our meeting of January 18"—do you recollect that meeting, Mr. Day?

A. As I recall, that meeting was held awaiting the report from the Hartford-Empire as to our inquiries for a license agreement.

Q. With whom was that meeting held?

A. Mr. Schwenzfier and our people in Detroit.

Q. And that was after Mr. Schwenzfier had transmitted your material to Hartford?

A. That is right.

Q. What was the outcome of that meeting?

A. There was no result of it; we did not have any information to hold the meeting on; we had no word from Hartford-Empire.

[fol. 3111] Q. So you sent that letter, Government's Exhibit 496?

A. That is right.

Q. I show you, Mr. Day, Government's Exhibit No. 497. Is that a letter which you received under date of February 1, 1936, from Mr. A. M. Pease, of the Hartford-Empire Company?

A. It is.

Q. You see a pencil notation on the side of that letter?

A. I do.

Q. Do you recognize the handwriting of that?

A. I do. That is mine.

Q. What does that statement say? Will you read it?

Mr. Middleton: Just a minute. We object.

Mr. Apsey: The witness has testified that it is in his own handwriting.

Q. When did you write that, Mr. Day?

A. Very shortly after the receipt of that letter.

The Court: What exhibit is this?

Mr. Apsey: This is Government's Exhibit No. 497, a letter of February 1, 1936, by Mr. Pease to Mr. Day, the witness. I should like to show it to Your Honor in a moment.

(Letter shown to Mr. Middleton.)

Mr. Middleton: I do not think that that is sufficiently important to object to it.

Q. The notation on the letter is: "How come in view of user's statement"——

A. That word "over-capacitated" is underlined on that [fol. 3112] notation on there, because of the fact that deliveries of beer bottles in Detroit at that time were very poor. We had very much difficulty in obtaining deliveries.

Q. I now show you, Mr. Day, Government's Exhibit 498. Is that a carbon copy of a reply you sent to Hartford-Empire Company to the Exhibit 497?

A. It is.

Q. You mention in that letter that you were "looking forward to seeing representatives of Hartford this coming week"; did you eventually see them?

A. In response to that letter I received a wire from Mr. Pease.

Q. I show you Government's Exhibit No. 499. Is that the wire you received from Mr. Pease?

A. That is.

Q. As a result of that wire, did you have a conference?

A. We did.

Q. What was the date of that conference?

A. I think it was February 12, 1936.

Q. Who was present at that conference?

A. Mr. Brown, Mr. Smith, Mr. Eldred, and Mr. Pease.

Q. That was Mr. F. Goodwin Smith?

A. Yes, sir.

Q. And Colonel R. D. Brown?

A. I think so.

Q. Tell us in your own words the substance of the con-

versation that was had, and the things that happened at that meeting?

[fol. 3113] A. The meeting was held in the Hartford Club, a private dining room. We had lunch there. During the lunch and after the lunch we discussed this question of the glass plant to be erected in the city of Trenton, outside of Detroit,—the advisability of it. As I recall, it was a very thorough discussion of what our prospects were and what our intents were as to capitalization, personnel, outfit; what type of glassware we intended to manufacture.

Q. You told them the personnel and character of the proposed outfit?

A. We did.

Q. The character of the glassware?

A. That is right.

Q. Chiefly beers?

A. That is true.

Q. You may go on.

A. That discussion took about two hours' time. All during the conference, it was quite evident that——

Mr. Haight: Objection to that.

The Court: Yes.

Q. Just what you said and what they said; not your conclusions.

A. They said it was not an encouraging picture to start a glass plant in that community.

Q. Was anything said about a license?

A. We asked them for a license. They did not deny a license; however, they spent all of the time telling us, even [fol. 3114] if we did have a license, we could not make any money in the manufacture of glassware.

Later on in the conversation I again directly asked them for a license. The suggestion was made that it might be wise to buy up some plant which was not operating, in order to get an assignment of that person's license agreement. The purpose of that was so as not to conflict with the Owens-Illinois——

Mr. Goodrich: Objection to that.

The Court: Yes, what was said.

A. That was what was said.

Q. Who said it?

A. I think Mr. Brown or Mr. Eldred, one of the two—wait a minute—Mr. Smith, I mean.

Q. Tell us just what he said.

A. The conversation led up to Mr. Levis, of the Owens-Illinois Company. Then the suggestion was made to purchase one of these plants which was not operating, so that we could obtain a license without conflicting with Mr. Levis.

Q. Was anything said about the reason why you should not conflict with Mr. Levis?

Mr. Middleton: Objection.

Mr. Goodrich: Objection to the question.

Mr. Apsey: I am asking for what was said.

The Court: Overruled. He may answer.

A. There was a conversation as to the Owens-Illinois, because of their proximity to that area. At that time I had told them we had had conversations here in Detroit that [fol. 3115] Mr. Levis was to see that no glass plant entered Detroit.

Mr. Middleton: Motion to strike that last.

Q. Who said that?

A. I said that.

Q. To whom did you say that?

A. All four of them.

The Court: Objection overruled.

Q. Did any of the gentlemen at the conference say anything as to why Hartford was interested in the Owens-Illinois interests in Detroit?

A. Other than the Owens-Illinois were licensees of the Hartford-Empire Company.

Q. That was stated, was it?

A. That is right.

Q. Did you make any notes of what transpired at that conference?

A. I did.

Q. When did you make them?

A. During the meeting.

Q. I show you this letter. Is this a carbon copy of a letter you sent to Hartford-Empire, dated February 6th, 1936?

A. It is.

Q. You see certain notations on it?
A. I do.
Q. When did you make those notations?
A. During the meeting held in the Hartford Club.

[fol. 3116] Mr. Apsey: Offer this, Your Honor, as Government's Exhibit No. 498-A.
Mr. Middleton: Objection.

* * * * * * *

The Court: You may question the witness about the notations on the exhibit; but I do not believe that the Court will admit the exhibit for evidenciary purposes, because of the fact that the witness now occupies the stand. He made these notations. The notations would be in the nature of self-serving notations. You may refresh his memory from these notations, and he may explain them.

[fol. 3117] Q. I see here, Mr. Day, you have written——

Mr. Middleton: I object to the reading of what is on that.
The Court: Overruled.

Q. I direct your attention to this note on the right hand side here.. Tell the Court what was the conversation which that note was intended to record?
A. Yes, there was a conversation as to the various plants which were not in operation, and which possibly would be for sale, that we could acquire and thereby obtain a license agreement or an assignment of it.
Q. What were those plants?
A. The Hart Glass Company, Dunkirk, Indiana. As I recall now, that conversation was merely for us to check up on it to see whether or not we could purchase it.
Q. Over here on the left hand, there is another notation. Tell the conversation which that was intended to record.
A. That was during the conversation about the amount of money we had available for the erection of our plant. The conversation with Mr. Smith and Mr. Eldred was that a full and complete plant would cost from 250 to 300 thousand dollars,—that would be an operating plant.
Q. You had raised about $100,000?
A. That is right.
Q. And also you had the land donated?
A. We did.

Q. I see here a certain statement that you have written at the bottom of the page here. What was the conversation [fol. 3118] that that was intended to record?

A. That was relating to pharmaceutical ware. They advised at that time it would not be good business for us to enter that field because of large mould cost necessary to production of that ware. However, that was not so interesting to us because our intent was to manufacture beer bottles.

Q. But you had mentioned to them that you would be interested in pharmaceutical ware?

A. We did.

Q. Down here is another notation, under that. What was the conversation that that was intended to record?

A. During the large correspondence before this meeting, and during this meeting, it was mentioned, time and time again, that the field was over-capacitated. Always the word "over-capacitated"—which, of course, did not strike clear to us because of the condition then existing in Detroit.

Q. Down here in the left hand corner there is a notation. What was the conversation that that relates to?

A. That relates back, again, to the conversation we had relative to Mr. Levis of the Owens-Illinois. They would not care to issue a license direct to us, but preferred to have us obtain a license through assignment by the purchase of another plant.

During that conversation there was another plant, as I recall, at Paden City.

[fol. 3119] Q. West Virginia?

A. That is right.

Q. There is another notation here. Does that refresh your recollection about anything said in the conversation?

A. Yes, that refers right back again to the conversation regarding Mr. Levis. I can recall distinctly the conversation we had. I told them of the information that we had had of Mr. Levis, who was a pretty hard man to get along with; he did not want us in business. And that is the result of that conversation, that they did not want to issue a license direct, and incur the enmity of Mr. Levis.

Q. And incur the enmity of Mr. Levis?

A. That is right.

Mr. Middleton: I move that last be stricken.

The Court: Overruled.

Q. I direct your attention to the last notation that we have not discussed, up here: What does that refer to?

A. It says "I.S. Machine, Complete, $15,000". There was some discussion of the purchase or possibility of purchase of their I.S. Machine. That was a request by myself to them, whether or not we could purchase it; and they established the price at $15,000.

Q. Have we covered now the substance of all said at that meeting?

A. I think, pretty well; except the fact that they thought we ought to go home and discuss the feasibility of going into the glass business a little further.

[fol. 3120] Q. When you left there did you have a license, Mr. Day?

A. We did not.

Q. Did they inform you that if they grant you a license Owens might share in the royalties which you will be paying?

A. That was not mentioned.

Mr. Middleton: I object.

Q. Did they inform you that Hazel-Atlas might share the royalties?

A. They did not.

Q. Now, I show you Government's Exhibit 500, a letter of February 18, 1936, addressed to the Hartford-Empire Company, attention A. M. Pease. Is that a carbon copy of a letter you sent?

A. It is.

Q. Was that letter followed up by another letter?

A. It was.

Q. I show you Government's Exhibit 501, a letter dated February 26th, 1936, addressed to the Hartford-Empire Company, attention Mr. Pease. Is that a carbon copy of a letter which you sent?

A. It is, yes.

Mr. Apsey: In that letter I direct the Court's attention at this time to the fact a definite formal application is made in this letter for a license. Therefore the proposition now resolves itself to a formal request for a license agreement under these letters.

[fol. 3121] Q. Did you receive a reply to that letter?

A. We did.

Q. I now show you Government's Exhibit 502, a carbon copy of a letter signed by Mr. Pease, addressed to you. Did you receive that letter?

A. I did.

Q. You will notice in that letter it says, it says first Mr. Smith isn't here and they can't pass on your request for a license until he returns. Then it says, however, if Mr. Smith were here we would be unable to give you an answer without having more complete information than you have already given. Then follows a long list of requests for information. The first one is the financial set-up, that is the paid-in capital, amount of working capital available, the investment of the plant equipment, et cetera. Did you at that time furnish that information?

A. I furnished that information to Mr. Schwenzfier, who forwarded it to Hartford, and that was discussed at the Hartford meeting.

Q. When this letter was sent, Hartford already had the information asked for in paragraph 1?

A. Yes.

The Court: What date was that meeting in Hartford?

The Witness: February 12.

Q. I direct your attention to the second paragraph. We would like to know the names of the new concern's financial [fol. 3122] sponsors, how much each stockholder is investing, further, how much stock to be sold to the public, if any?

A. They had that information at the time through Mr. Schwenzfier and myself. They also knew no stock was to be offered to the public, that it was to be a closed corporation.

Q. The third paragraph, you haven't definitely outlined the types of ware you intend to make. We know, of course, about the beer, but am hazy on the other products. Had that information been furnished?

A. That information had been furnished and they knew our head product would be beer bottles, and also that we might go into the milk bottle field.

Q. Did you discuss pharmaceutical bottles?

A. Very much, but they discouraged us on that.

Q. The fourth item, "In your letter you mention purchase of three I.S. machines but make no mention of Lehrs. We would like to know your plans on that." What was the story on that?

A. The story was we did not have lehrs, but we had lehrs available. We could purchase them, but we did not feel the question of lehrs was of importance or consequence at that time.

Q. You did not furnish them that information?

A. We did not.

Q. The last paragraph, "We would like to know the engineering firm who is to draw up specifications for your plant"?

[fol. 3123] A. We didn't get that far because we were waiting to see whether we could proceed with the license agreement before we would spend any more money. We had an engineer before who drew up our proposed set-up, but to proceed further we didn't think it wise until we knew whether or not we could proceed.

Q. As a result of that letter, what further was done with respect to your enterprise?

A. After receipt of this letter Mr. Schwenzfier again called at my office with Mr. Clippert and told us of a telegram received by Mr. Schwenzfier from Mr. Pease telling him to leave the Detroit crowd alone and skip the entire matter. After that we knew it was useless to attempt to get a license agreement.

Q. Were there any efforts made after that time to launch this enterprise?

A. Yes. There was considerable effort after that. Mr. Howard and two or three of our members decided it might be wise to proceed and erect our plant with the machines we had and attempt to market our product. However, it was overruled because we thought we would be inviting lawsuits and we did not care to continue.

Q. Did the capital remain available for any length of time?

A. The capital remained available until about a year ago.

Q. What happened a year ago to make a change?

A. Mr. Clippert died, and since then one of our other members died.

[fol. 3124] Q. Do you know of any enterprise in Detroit that is now looking for license?

A. I know there is still considerable interest by people in Detroit to operate a glass plant.

Q. Do you know who those people are?

A. I don't know who those people are. I know who the

representative is, that is Mr. Howard, the investment broker.

Q. Do you know how much capital they have available?

A. No. I don't think I can answer that.

Q. Do you know whether they have capital?

A. They have capital of sufficient amount to go ahead. Of course that would depend upon re-creating interest again.

Q. They are willing to go ahead now, Mr. Day?

A. I understand they are.

Mr. Haight: We have to move to strike that and the preceding answer too, because the answer is I just understand, and it necessarily must be hearsay, and Mr. Day very frequently says he gets his information from the investment broker and that must be hearsay.

The Court: Yes. If it is merely an understanding the motion will be sustained.

Mr. Apsey: That is all.

Cross examination.

By Mr. Goodrich:

Q. You never replied to the letter of February 28th, 1936, Government's Exhibit 502?

A. We did not.

[fol. 3125] Q. Do you have a copy of what you supplied Mr. Schwenzfier?

A. I have it in my files.

Q. You did not bring it with you?

A. No. I did not.

Q. What did you tell Hartford either at the conference or in this information you say you gave Mr. Schwenzfier as to the financial sponsors of the new concern?

A. We gave Mr. Schwenzfier, and I believe the people in Hartford-Empire, the personnel of our intended corporation.

Q. When you say personnel, what do you mean?

A. I mean the financial sponsors.

Q. Who were they?

A. Mr. Clippert, Mr. Walter Haas, Mr. Helmel, Mr. Howard, and a Mrs. Davis, and myself.

Q. Mr. Clippert you said was vice-president of the Goebel Brewery?

A. Yes.

Q. Was he also majority stockholder of that brewery?

A. I would not say. I don't know. I don't believe so.

Q. Do you know whether he was a stockholder at all?

A. I know he was a very substantial one.

Q. Mr. Haas I believe you said was——?

A. President of the brewery.

Q. President of the Goebel Breweries Company, and if you know, he likewise was a substantial stockholder?

A. Yes. His interest was in this land that was being turned over to the corporation.

[fol. 3126] Q. At one time you said Mr. Haas was to sell the land and at the second time you said it was a donation of land?

A. It was to be turned in for stock.

Q. How much stock was he to receive for the land?

A. $15,000, as I recall.

Q. What was to be the total capitalization of the company?

A. $150,000 I believe.

Q. So he was to get ten per cent of the stock for the land?

A. That is right.

Q. The land was a tract of what, about 225 acres, wasn't it?

A. Oh, no. The land consisted of 10 to 15 acres.

Q. Where was this located?

A. In the city of Trenton, or it might be called the village of Silbey.

Q. Right in the city—in the town?

A. Yes, on the main highway.

Q. Isn't it a fact Mr. Haas made previous efforts to sell that land?

A. No, he made previous efforts to sell land across the highway and there was an option to purchase that for a long number of years by some steel company, but not this particular tract.

Q. He never attempted to sell this to the Ford Glass Company?

A. Not that I know of.

Q. How much stock was Mr. Haas to take besides this 15,000 for the land?

[fol. 3127] A. As I recall, that was all at that time.

Q. Mr. Clippert was to take how much?

A. I am testifying without notes now.

Q. To the best of your recollection?
A. I think $25,000.
A. And Mr. Helmel, who was Mr. Helmel?
A. He was vice-president of the Motor Products Corporation of Detroit.
Q. How much was he to take?
A. $25,000.
Q. Mr. Howard, who was he?
A. Mr. Howard was the man in our employ who furnished these machines to us and was to operate the plant.
Q. You said he had been a glass man all his life?
A. Yes.
Q. You knew that of your own knowledge?
A. I later found out to my own knowledge.
Q. Mr. Howard told you at least?
A. Yes.
Q. With what glass company had he been connected?
A. I could not tell you now. There was a whole number of glass companies, as I recollect.
Q. He worked for a good many of them?
A. Yes.
Q. How much stock was he to take?
A. That would have to be merely guess-work.
Q. I will take your guess?
A. As I recall, $30,000 for the equipment he was to get.
[fol. 3128] Q. How much cash?
A. He was to put in no cash. Just the equipment he had.
Q. Just the machinery?
A. That is right.
Q. Do you know where he got those machines?
A. I did know at the time. Right now I could not tell you.
Q. Do you know what he paid for them?
A. I don't.
Q. Did you at the time know anything about their condition?
A. Yes. We had another glass man, Mr. Schwenzfier, go down and examine the machinery.
Q. He told you it was in good condition?
A. Yes.
Q. You knew nothing about glass machinery yourself?
A. I didn't.
Q. So Howard was to put in no cash?
A. Right.

Q. He was to turn in these machines, you think, for $30,000 of stock?

A. I think that is close to it.

Q. Who was Mrs. Davis?

A. Mrs. Davis was a friend of one of these members here who wanted to invest a thousand dollars, which she did.

Q. But not in this company?

A. The company was not formed.

Q. So she did not invest it in this company?

A. That is right.

Q. How much were you to put in?

[fol. 3129] A. I and two clients of mine whom I don't care to disclose would put in the balance, making a total of a hundred thousand dollars.

Q. How much were you yourself to put in?

A. 5,000.

Q. That was to be cash or services?

A. Cash.

Q. The two clients were to put in about how much?

A. What total do you have there now?

Q. I got 25 from Clippert, 25 from Helmel, a thousand from Mrs. Davis, and 5,000 from you, that is 56,000?

A. And Howard's, of course.

Q. Well, Howard was putting in no cash?

A. I know, but that would take up the capitalization.

Q. Then we got all the capital. Let me add again. 25 Clippert, 15 Haas, 25 more from Helmel, that is 65; 30 from Howard is 95. One from Mrs. Davis, 96, and five from you; 101,000?

A. That is about it.

Q. Of which 45,000 was to be in property and not in cash?

A. That is right.

Q. Now, did you disclose all that to Hartford?

A. We disclosed all that in a written set-up to Mr. Schwenzfier, who I understand forwarded it to Hartford's office.

Q. Whether it got there, you don't know?

A. I suppose it did or they would not have entered into the conversation as they did.

[fol. 3130] Q. How can you say that?

A. I don't know. I presume they did from the knowledge they had of our set-up.

Q. I don't want your presumption. Just facts. Now

Clippert and Haas together owned the biggest block of stock?

A. Yes.

Q. They were connected with the Goebel Brewing Company?

A. That is right.

Q. I presume their principal interest was to find a source of bottles for their brewery?

A. That is true.

Q. Howard was to be in charge of the plant, was he?

A. That is right.

Q. You never had an engineering firm draw up specifications for a plant and installation of machines?

A. We had contacted this engineering firm down here in Toledo, I don't recall the name of it. Mr. Schwalbe was the man connected with it.

Mr. Wall: Toledo Manufacturing Company?

A. I think that is it. He went into the matter quite fully and advised us not to attempt to start it. That was following his meeting with Hartford.

[fol. 3131] Q. Did he give you an estimate of the investment?

A. We told him the amount of capital we would have and he said he could erect a plant for that amount. The tonnage I don't recall, the size of the furnace which would be needed in that set-up.

Q. You had a capital promised of about $101,000?

A. That was committed. Yes.

Q. You had no plant?

A. That is right.

Q. You had no tank?

A. No.

Q. You had no lehrs?

A. That is right.

Q. You had no stackers?

A. That is right.

Q. You had no conveyors?

A. We had a considerable amount of small machinery and, understand, I don't know the mechanics of a glass factory, but through Mr. Clippert and myself and Mr. Howard we did purchase a considerable amount of small equipment necessary for that plant.

Q. You had no warehouse?

A. No.

Q. No railroad siding?

A. Oh yes, the railroad siding was on the property.

Q. That was to be sold to you with the property for $15,000 in stock?

A. Yes.

[fol. 3132] Q. Had your glass sand been tested?

A. The glass sand had been tested, that is the Michigan Silica, I believe. Yes, we did have a report from them as to their test.

Q. Now, you mentioned in your direct examination some interest of some milk bottle purchaser in this plant?

A. That is right.

Q. Who was that?

A. That was Mr. Harry McDonald. Now I did not have contact with him to know, but he is a milk man in Detroit of considerable size, and he was interested at that early stage of the thing, in the glass business.

Q. He hoped, I assume, to use this factory to supply his bottles?

A. That is right.

Q. As representative for the group, did you have knowledge he was interested in the project?

A. Yes, but the extent of his interest I don't know.

Q. The extent of his financial interest?

A. His interest was prominent at the time I went to Washington to obtain the permit under the NRA.

Q. In other words, here was a milk producer who became interested in your product as a source of supply for his bottles?

A. That is right.

Q. In view of remarks concerning Mr. Schwenzfier, I invite your attention to the last to the next paragraph in Exhibit 502, which says as to Mr. Schwenzfier that, "We [fol. 3133] merely wish to say that his past contacts with you have been informal and unofficial and when your plans have reached a further stage of development to take up all contracts directly with Hartford"?

A. That is right.

Q. Mr. Schwenzfier was very courteous and helpful to you at all times?

A. He certainly was. He gave us knowledge we never had before in the glass business.

Q. I believe he told you to investigate the patent situation before you got your machines, did he not?

A. I don't know as that was the way he put it. He said it would be necessary to obtain a license agreement from Hartford-Empire.

Q. Nevertheless, without going into that you had agreed with Mr. Howard to take his machines in for $30,000?

A. That is right.

Q. Not knowing whether or not you could operate?

A. Yes.

Q. You are speaking now of the two Lynch machines and the O'Neill machine?

A. That is right.

Q. Do you know what kind of an O'Neill machine that was?

A. No. I don't know.

Q. You don't know whether it was a feeder or suction machine?

A. No. I could not say.

Q. I notice one other comment on what is marked as [fol. 3134] Exhibit 498-A which Mr. Apsey did not call your attention to. I show you that and ask whether that reflects on the manner in which your story was heard at Hartford?

A. Yes. That word was put on there because of the attitude of Mr. Eldred, whom I presumed to be sympathetic about our opening of a glass plant. In fact, we received more encouragement from his remarks than from the other three.

Q. Where did the machinery come from that Mr. Howard had?

A. I can't state that. I don't know.

Q. Did you know at the time?

A. I did. Yes.

Q. But you have forgotten now?

A. Yes.

Q. Is Mr. Howard still in Detroit?

A. No. He never was from Detroit.

Q. Where is he from?

A. Findlay, Ohio.

Q. Is he still there?

A. As far as I know.

Q. Do you know where the machines were at that time?

A. We had some stored in Massillon, Ohio. The others were stored in Findlay.

Q. Under Howard's supervision?

A. Yes.

Q. In his possession?

A. Yes. That is right.

Q. You don't know now where he brought them from?

A. No. I don't.

[fol. 3135] Q. Mr. Day, did someone at the conference give you the information it would cost between two hundred or three hundred thousand dollars to start the plant?

A. That would mean an up-to-date plant necessary to compete with the existing field.

Q. That is a very good statement. Apparently you thought you could compete on less?

A. As to how many tanks or amount of production, I would not say.

Q. We are talking about, as you said, competing in the existing field?

A. That is right.

Q. You just didn't want to accept Mr. Smith's opinion as to the capital required to go into the glass business on a satisfactory basis?

A. I don't think there was a question of accepting that. We knew what our capital was. We had been advised by Mr. Howard and Mr. Schwenzfier we could operate on that amount of money, probably on a limited tank,—I don't know that,—or on a limited capacity.

Q. You have never been in the glass business yourself?

A. I have not.

Q. You never represented any glass concern?

A. No.

Q. What information you had of the glass business or now have, is what you picked up or have been told?

A. That is right.

Q. Isn't that same thing true of the knowledge of the [fol. 3136] condition you stated respecting the glass market in Detroit?

A. No, I don't think that is true, because I did have actual knowledge that the breweries at that time in Detroit could not get deliveries.

Q. Mr. Clippert told you that?

A. Mr. Clippert and two or three of the other breweries in Detroit.

Q. Had you, yourself, gone to the breweries to inquire as to the condition of their supply?

A. I did not inquire. They offered that, themselves, through meetings we had.

Q. Were you trying to interest other breweries?

A. Not particularly so at that time, because we did not know if and when we were going to get in the business.

Q. Did other breweries express an interest in the project?

A. They expressed a fine interest in the project and they would have been glad to buy their bottles from a local concern.

Q. Did they indicate they wanted to take some stock in the company?

A. We did not have any conversation as to their interest or participation in the stock.

Q. But none of these people gave you any firm orders?

A. We could not accept a firm order. We were a long ways from production.

Q. Did any of them say to you in a manner in which you could rely, "We will buy our beer bottles from you"?

A. Yes, if we manufacture beer bottles we will buy bottles from you. We took it up with all of the breweries in the [fol. 3137] city of Detroit with the exception of Stroh's.

Q. How many?

A. E. & B., Tivoli, Schmidt's,—I would say probably five or six in all. Those statements were made to Mr. Clippert direct.

Q. Any promises on paper?

A. No.

Q. No letters, no contracts?

A. No.

Q. Just verbal assurance that if Mr. Clippert got his glass factory running they would be pleased to buy beer bottles from him?

A. Yes.

Q. Even though he was a competitor in the beer business?

A. Apparently competitors are quite friendly in Detroit in the beer business.

Q. Well, it is pretty hard not to be friendly over beer?

A. That is right.

Mr. Goodrich: At this time, Your Honor, I wish to have marked four letters here that government counsel asked to have photostated before but did not offer when these other

letters went in. They are not of importance but they just complete the correspondence.

Mr. Isseks: We are perfectly willing. We are just trying to save time. We have no objection.

Mr. Goodrich: We have lots of time.

(Exhibits above referred to are marked H-5037, to H-5040, inclusive.)

[fol. 3138] Q. While we are waiting, Mr. Day, the Trenton Distillery is no longer in business?

A. That is true.

Q. When did it cease operation?

A. It must have been a year and a half or two years ago.

Q. That was one of your customers?

A. Yes. Their property was very closely connected with the property we had.

Mr. Goodrich: H-5037 is a letter of February 20, 1936, to Mr. Day from A. M. Pease.

H-5038 is a telegram of January 18, 1936, to George E. Day from Mr. Eldred.

H-5039 is a letter of January 21, 1936, to Hartford-Empire Company from Mr. Day.

H-5040 is a letter to Mr. Day from Hartford-Empire Company by A. M. Pease.

Mr. Isseks: We stipulate as to genuineness.

Mr. Goodrich: Thank you. We offer them.

The Court: They may be admitted.

Q. The fact is, Mr. Day, you have never been refused a license to this day by Hartford-Empire, have you?

A. No, we have not, but we didn't get one.

Q. Beg pardon?

A. We didn't receive one and we were not denied one.

Q. You did not reply to Hartford-Empire's letter of February 28, 1926?

A. Because of the conversation and direction to Mr. Schwenzfier.

Q. If you please, just answer my question.

[fol. 3139] A. No. We did not reply to it.

Q. And you have made no further application for license since that time?

A. No. We have not.

The Court: Any further cross-examination of this witness?

Mr. Goodrich: That is all for me.

Mr. Isseks: I have three questions I want to ask the witness, so he can go back to Detroit.

Redirect examination.

By Mr. Apsey:

Q. I direct your attention again to Exhibit 496, the last paragraph, "I understand Mr. Schwenzfier outlined in detail the various parts of our present setup, the kind of machinery now owned," etc., and I direct your attention to Exhibit 501, a letter of February 26, 1936, to Hartford-Empire Company: "Recently I talked with Mr. Schwenzfier for the purpose of having a further discussion with reference to our plans. However, he informed me he was under instructions from your office to refrain from any discussion whatsoever." Prior to that information referred to in that letter, had you ever received any information from Hartford that Mr. Schwenzfier was not authorized to represent them?

A. No. We did not.

Q. Prior to the statement in the letter of February 28, 1936, Exhibit 502, which Mr. Goodrich called attention to, had you ever received from Hartford any direct information that Mr. Schwenzfier was not authorized?

[fol. 3140] A. No. We had not.

Q. Did you at any time have any talk with Mr. W. J. Belknap or Mr. Isaac Collins with respect to this Detroit enterprise?

A. There was some discussion on the train returning from Washington at a meeting of the TNEC.

Q. What was the substance of that?

Mr. Fuller: I object until we find out who he is talking to.

The Court: He said he was talking with W. J. Belknap.

Mr. Isseks: To Isaac Collins too.

Mr. Haight: So far as the conversation with Mr. Belknap is concerned, we certainly object to it.

The Court: Yes. That could not be binding upon the Hartford Company. Which Belknap was this?

Mr. Isseks: W. J. Belknap. Your Honor, there has been testimony by Mr. Goodwin Smith at great length about being general counsel.

The Court: He may answer if it is pertinent to the issue.

Mr. Isseks: Was Mr. Collins present?

The Witness: Yes.

Mr. Isseks: Was Mr. Belknap present?

The Witness: Yes.

The Court: Who is this Collins?

The Witness: As I recall it, it was Ike.

Mr. Apsey: It was testified Mr. Ike Collins is a director [fol. 3141] of Hartford and head of the Anchor-Hocking.

Mr. Wall: Not at that time.

Mr. Apsey: He is a defendant in this case.

Mr. Isseks: It is not important whether Mr. W. J. Belknap was present on behalf of Hartford. Mr. Collins was present at that time on behalf of Hartford.

The Court: Is he a defendant in the case?

Mr. Isseks: Yes.

Mr. Haight: And Mr. Belknap is not?

The Court: Yes, I suspect what Mr. Belknap said would not be binding on the defendants.

Mr. Isseks: Let's hear what Mr. Collins said.

The Court: All right.

Q. What did Mr. Collins say?

A. Mr. Collins said he had a million-dollar plant in some town, I don't recall where it was now, which he said was shut down and they had a large amount of money invested and he was now losing a large amount and that we would be foolish to go into the business in Detroit, because it would be highly technical, but we did not know what it was all about.

Recross-examination.

By Mr. Middleton:

Q. Is Mr. Collins in the room now?

A. I would not know him if I saw him today.

Q. Do you recognize anyone here in the room as being present on the train with you that night?

A. That gentleman at the end with the mustache. (Indi- [fol. 3142] cating Mr. E. F. Martin.)

Q. That is the one?
A. Yes.

Mr. Isseks: He was not the one that made the statement?
The Witness: He asked me if anyone was present.

Recross-examination.

By Mr. Goodrich:

Q. I would like to ask Mr. Day whether this O'Neill machine you had was a feeder or former?
A. I answered before I did not know.
Q. I asked you before whether it was a suction machine?
A. I can't state.
Q. You don't know what kind of machine?
A. No.

Redirect examination.

By Mr. Apsey:

Q. You already testified that you did have O'Neill feeder machines?
A. Yes.

The Court: Anything further on cross-examination on that subject? That will be all, Mr. Day.
The bailiff may recess court until 2 o'clock.

(Noon Adjournment.)

[fol. 3143] (At 2 o'clock p. m. Friday, April 4, 1941, the hearing was resumed.)

The Court: Proceed.
Mr. Isseks: At this time, Your Honor, I would like to offer the reply to Government's Exhibit 656, the reply marked Government's Exhibit 657. It is an original document on the letterhead of Dorsey & Cole, dated Jyly 6, 1927, addressed to the witness and signed, "R. D. Brown", and it has been stipulated as to genuineness by Owens-Illinois Glass Company at page 12 of the stipulation.
The Court: It may be admitted.

(Government's Exhibit 567 read by Mr. Kramer.)

Q. I show you the original, Government's Exhibit 657. That is Col. Brown's signature, is it not?

A. I would think so, yes.

Q. Now, no suit was ever brought on the Headley & Thompson patents, as far as you know?

A. I don't know. The Headley & Thompson patents didn't issue until 10 years after that, you know.

Q. I understand, issued in 1933?

A. Well, thereabouts.

Q. As far as you know no suit has been brought on the Headley & Thompson patents? Well, I am told there may have been a suit brought against the Washington Mold & Foundry Company.

A. I don't know.

Mr. Isseks: At this time I would like to offer the witness' reply to the last letter. This is Government's Exhibit [fol. 3144] 658, and is on the letterhead of Owens Bottle Company, Toledo, July 8, 1927, addressed to Mr. Brown, signed by the witness, stipulated by Hartford as to genuineness. *That*

Q. That is your signature, is it not?

A. Yes.

Mr. Isseks: Copies to Mr. C. B. Belknap and V. M. Dorsey. I offer it in evidence.

The Court: It may be admitted, over objection.

(Government's Exhibit 658 read by Mr. McCracken.)

Q. Mr. Carter, did you write that letter?

A. I don't remember it but I have no doubt that I wrote it.

Mr. Isseks: Now, at this time I would like to offer in evidence the enclosure, namely, photostatic copy of a copy of a letter dated July 8, 1927, addressed to Mr. C. F. Miller, Emery, Booth, Janney and Varney, dated July 8, 1927, signed "Owens Bottle Company, Henry W. Carter". It is not in Your Honor's book, was copied during the lunch hour. The enclosure referred to in the letter was stipulated by Hartford-Empire Company as having been found in its files.

Q. I show you this paper and ask you whether that is the enclosure referred to in the previous exhibit, 658?
A. I have no doubt that it was.

Mr. Isseks: I offer it in evidence.
The Court: It may be admitted.

(Government's Exhibit 659, enclosure referred to, read by Mr. Kramer.)

[fol. 3145] Mr. Isseks: At this time I would like to offer in evidence as Government's Exhibit 660, photostat of an original letter on the letterhead of Dorsey & Cole, dated July 11, 1927, addressed to the witness, signed "R. D. Brown". It is stipulated as to genuineness by Owens-Illinois, page 12.

Q. I show the witness a photostat of the original and ask him whether that is Col. Brown's signature.
A. (After examining same.) Yes, I would think so.

Mr. Isseks: I offer it in evidence, Your Honor.
The Court: It may be admitted.

(Government's Exhibit 660 read by Mr. Kramer.)

Mr. Isseks: Your Honor, at this time I offer as the next Government's Exhibit, 661, photostat of a carbon copy of a letter dated July 18, 1927, addressed to R. D. Brown, Hartford-Empire Company, signed "Henry W. Carter", carbon copy to Mr. Dorsey and Mr. Belknap, stipulated as to genuineness by Owens-Illinois at page 12 of the stipulation.
The Court: It may be admitted.

(Government's Exhibit 661 read by Mr. Kramer.)

Q. Mr. Carter, did you write that letter?
A. I don't recall it, but I have no doubt that I wrote it.

Mr. Isseks: At this time I offer in evidence Government's Exhibit 662, photostat of a copy of a letter dated December 26, 1928, addressed to Mr. Goodwin Smith, signed "Henry W. Carter", stipulated as to genuineness by Owens-Illinois Glass Company, at page 14 of the stipulation. There is a [fol. 3146] mistake on the first page, the date should be '28, and not '26.
The Court: Do you offer it?
Mr. Isseks: Yes.
The Court: It may be admitted.

(Government's Exhibit 662 read by Mr. Apsey.)

Q. Did you write that letter, sir?

A. I have no doubt that I did.

Q. You refer, in the next to the last paragraph, to the "risk of the conspiracy charge which we have been dreading". What conspiracy charge are you referring to?

A. All I know is what the letter says.

Q. Oh, please, Mr. Carter: you wrote the letter. You said, "at the risk of the conspiracy charge". Was it a conspiracy to violate the Mann Act?

A. I presume what I had in mind was the fact that we were working together, had been since the 1924 agreement.

Q. Was it a conspiracy to violate the Pure Food and Drug Act?

A. I don't know anything about that.

Q. What were you talking about? What kind of conspiracy were you "dreading",—"conspiracy charge"?

A. Well, practically, from my point of view, we were fearing that a defense might be made, that the complainant in this case, assuming we had sued the Ball Company, for instance, we were both suing him, that we were in cahoots, so to speak, against Ball.

Q. Weren't you worried about the conspiracy charge in [fol. 3147] violation of the Sherman Act?

A. Well, I never paid any attention to that phase of the proposition. I left that entirely—I was a patent lawyer. I never paid any attention to the Sherman Act or the Clayton Act.

Q. You were dreading the conspiracy charge; that is true, isn't it?

A. That is what it says there. I don't remember the letter at all.

Mr. Isseks: Your Honor, at this time I offer in evidence as Government's Exhibit 663, original carbon copy, not a photostat, dated July 30, 1929, addressed to William E. Levis, vice-president and general manager, "Re Whitall Tatum option to Hartford", signed "Patent and Licensing Department", apparently by the witness, because his name is typewritten in the lower left-hand corner, "H. W. Carter"; stipulated as to genuineness by Owens-Illinois at page 10 of the stipulation.

The Court: It may be admitted.

(Government's Exhibit 663 read by Mr. Kramer.)

Q. You wrote that, did you not?

A. Undoubtedly.

Q. And before the Headley & Thompson applications became patents, O'Neill was bought out by your company, was it not?

A. Well, I couldn't say as to the exact date. It was about that same time, I think.

Q. The patents were issued, I believe, in August or July [fol. 3148] of 1933, and your company bought out O'Neill, I believe, in May, '33; do you remember that?

A. I couldn't tell you about that time.

Q. And before the Headley & Thompson patents issued there was some kind of an arrangement made with Lynch, was there not?

A. Well, I never had anything to do with that. I understand there was something with Lynch.

Q. Do you remember after the July, 1932, contract with Owens and Hazel-Atlas, Hartford and Hazel-Atlas and Owens and Hartford, there was some question whether or not Hazel-Atlas would share in the expense, which was about 5,000 a month, under the Headley & Thompson option?

A. No, I don't remember.

Q. I show you Government's Exhibit 308, which purports to be original document prepared by you and sent to Mr. Phillipps, and copy to Mr. Williams, and ask you whether you remember writing that memorandum to Mr. Phillipps? Did you write Government's Exhibit 308?

A. (After examining same.) I have no doubt that I wrote it.

Q. I call your attention, Mr. Carter, to a memorandum on the face of the original exhibit, Government's Exhibit 308, addressed to you. Do you recognize the handwriting?

A. Mr. Phillipps'.

Q. Will you please read the memorandum? I will read it and you follow me: "H. W. C.: Mr. Levis agrees that we should not go on the non-exclusive basis until negotiations [fol. 3149] are progressing with Miller users. He says that McNash is familiar in a general way with the deal and agrees to pay one-third of the expense. He suggests that Hartford bill Hazel for one-third from July 1, and that no formal contract be discussed at present unless Hazel opens

the subject." Then there is Mr. Phillippe' initials and the date 8-11-32; that is right, isn't it?

A. Yes.

Mr. Isseks: I offer the handwriting part of the memorandum in evidence at this time. Your Honor reserved decision until the witness appeared.

The Court: It may be admitted.

Q. Mr. Carter, do you remember sending a copy of this memorandum, Government's Exhibit 308, to Mr. F. Goodwin Smith?

A. No, I don't remember anything about it.

Q. Do you know whether or not Hazel-Atlas agreed to pay one-third of the expenses in connection with the Headley & Thompson option?

A. No.

Mr. Isseks: At this time I offer as Government's Exhibit 664, carbon copy of letter dated August 12, 1932, addressed to Mr. F. Goodwin Smith, signed Owens-Illinois Glass Company, patent and licensing department, Henry W. Carter, vice-president, and stipulated as to genuineness by Owens-Illinois Glass Company at page 22 of the stipulation.

The Court: It may be admitted.

[fol. 3150] (Government's Exhibit 664 read by Mr. Kramer.)

Q. Does that refresh your recollection at all, Mr. Carter?

A. Not at all.

Q. You wrote the letter, though, did you not?

A. Undoubtedly.

Q. Now, Mr. Carter, you remember Section 22 of your April 9, 1924, contract, do you not?

A. Yes.

Q. Remember having various conferences with the Hartford people with regard to the carrying out of the provisions in Section 22 of the original contract?

A. Well, I remember it was discussed many times.

Q. Do you remember particular problems coming up with regard to whether or not certain companies should get an extension or renewal of the license?

A. Yes.

Q. With whom did you have those general discussions, sir?

A. Well, I think my contacts with them were probably with Goodwin Smith or with Knox Smith.

Q. And were those conferences very often or infrequent?

A. Quite infrequent, I would say, on this subject.

Q. How often would you say they came up, on that subject?

A. Well, I couldn't say.

Q. Periodically?

A. No, not periodically.

Q. Occasionally?

A. Occasionally, yes.

Q. I will show you Government's Exhibit 401, a letter [fol. 3151] dated January 21, 1927, to Mr. F. Goodwin Smith, which purports to be signed by you as treasurer, and ask you whether that is your signature?

A. That is my signature.

Mr. Isseks: That letter, as I recall it, deals in part with the question of an application by Winslow to make milk bottles, and the reply to that letter, I believe, is another Government's Exhibit which follows immediately thereafter, Government's Exhibit 403. No, I withdraw that. 403 relates to the same subject-matter, too, namely, issuing of licenses, but it is a general discussion from Mr. F. Goodwin Smith to the witness.

At this time I would like to have marked as the next Government's Exhibit, memorandum from the witness on the stationery of Owens Bottle Company, dated May 10, 1929, to Mr. William E. Levis, vice-president and general manager, signed Henry W. Carter, typewritten. That will be Government's Exhibit 665. Stipulated as to genuineness by Owens-Illinois at page 15 of the stipulation. I offer it in evidence.

The Court: It may be admitted.

(Government's Exhibit 665 read by Mr. Lewis.)

Q. Did you write that memorandum, Mr. Carter?

A. I have no doubt that I wrote it.

Q. The reference to Washington was to what?

A. Possibilities of government attack under the anti-trust suits.

Mr. Isseks: At this time, Your Honor, I offer in evidence [fol. 3152] Government's Exhibit 666, original letter on the stationery of Hartford-Empire Company, addressed to the witness, dated August 5, 1929, signed R. W. Eldred, with a notation in the upper left-hand corner. I ask the witness whether he can identify the notation in the upper left-hand corner?

The Witness: That is my writing.

Q. What does it read, sir?
A. "A.N.S. 8-9-29. H.W.C."
Q. And right above that is what?
A. "Mr. Levis."

Mr. Isseks: I thank you. I offer it in evidence.
The Court: It may be admitted.

(Government's Exhibit 666 read by Mr. Kramer.)

Mr. Isseks: Your Honor, at this time I would like to offer the reply as Government's Exhibit 667, of August 9, 1929, addressed to Mr. Eldred, signed Owens-Illinois Glass Company, apparently by the witness, patent and licensing department, stipulated as to genuineness by Owens-Illinois at page 16 of the stipulation.
The Court: It may be admitted.

(Government's Exhibit 667 read by Mr. Lewis.)

Q. Did you write that memorandum, sir?
A. I don't recall it, but I have no doubt that I wrote it.
Q. What were the "reasonable bounds" suggested by the Glass Container Association, referred to in your letter of August 9, 1929, to Mr. Eldred?
[fol. 3153] A. I don't recall that at all.
Q. Did you know that at the time?
A. No, I don't know anything about it. I don't remember any such thing.
Q. You weren't writing things you didn't know about, were you?

Mr. Middleton: I think the witness probably misunderstood the question.

Q. My question is whether you knew about it at the time you wrote it,—what the "reasonable bounds" suggested by the Glass Container Association were?

A. I don't know what I knew. All I know about that subject is what the letter shows there.

Mr. Isseks: At this time I would like to offer in evidence a reply from Mr. Eldred, Government's Exhibit 668, on the stationery of Hartford-Empire Company, dated August 13, 1929, addressed to the witness, signed "R. W. Eldred," stipulated as to genuineness by Owens-Illinois at page 16 of the stipulation.

The Court: It may be admitted.

(Government's Exhibit 668 read by Mr. Kramer.)

[fol. 3154] Mr. Isseks: I offer at this time, Your Honor, as Government's Exhibit 669, a copy of a letter dated December 6, 1929, addressed to the witness, signed by Mr. Eldred, stipulated as to genuineness by Owens-Illinois at page 16 of the Stipulation.

The Court: It may be admitted.

Thereupon, Government's Exhibit 669 was read to the Court by Mr. Apsey, of counsel for the government.

Mr. Isseks: At this time, Your Honor, I should like to offer in evidence the reply, dated December 11, 1929, addressed to Mr. Eldred, signed by the witness; stipulated as to genuineness by Owens-Illinois Glass Company, at page 16 of the Stipulation.

The Court: It may be admitted.

Thereupon, Government's Exhibit 670 was read to the Court by Mr. Lewis, of counsel for the government.

Q. You wrote that memorandum, did you not, sir?

A. I have no doubt I did.

Q. I show you Government's Exhibit 583, which purports to be a letter from you, dated December 31, 1929, to Mr. F. Goodwin Smith, and which has been stipulated as to genuineness by your counsel, and ask you whether you wrote that letter?

Mr. Isseks: Your Honor, this letter refers to the situation regarding Three Rivers and Hemingray.

The Court: It was admitted.

Mr. Isseks: It was admitted?

[fol. 3155] The Court: It was addressed by Mr. Carter to Mr. Goodwin Smith.

Mr. Isseks: That is right, Your Honor.

The Witness: I don't recall of the letter, but I have no doubt I wrote it.

Mr. Isseks: At this time I offer in evidence, as Government's Exhibit 671-a, the original of a letter dated September 24, 1930, addressed to Owens-Illinois Glass Company, attention Mr. Carter, signed Lloyd T. Williams; and the letter attached thereto, which is a letter dated September 18, 1930, addressed to Mr. Williams and signed Herbert Knox Smith. I have had marked the enclosure, 671-b.

I believe both documents have been stipulated as to genuineness, Your Honor.

Mr. Middleton: Your Honor, we object to the letter from Mr. Lloyd Williams to Mr. Carter, so far as the second paragraph is concerned, on the ground that it is purely a privileged communication. We wish not to waive that position in this case.

Mr. Isseks: Your Honor, as to the second paragraph, I assume you will defer a ruling, in view of the rulings heretofore being made, in the sense that they are being deferred pending Your Honor's decision.

I should like to read the first paragraph; and then to offer Exhibit 671-b.

The Court: I will say about the question on the three [fol. 3156] exhibits that have been offered, that I do not see in the exhibit to which objection has been made by Judge Haight, there is much, if any, merit in it; for the reason that the communication, as I recall it—and I do not have it before me now—is not a matter that the Court feels an objection should be sustained on the ground of privilege.

* * * * * * *

[fol. 3157] Mr. Isseks: It is Government's Exhibit No. 251. I now offer it in evidence.

The Court: No. 251 may be admitted.

* * * * * * *

Mr. Isseks: I gathered Your Honor was going to reserve decision on 127, 250, 386, and now on the second paragraph of 671-a?

The Court: That is right.

* * * * * * *

[fol. 3158] Q. At this time, Mr. Carter, I show you Government's Exhibit No. 409, being a memorandum dated December 13, 1930, to Mr. Levis: "Subject: Section 22, General License Agreement with Hartford"; and ask you whether you signed that memorandum?

A. That is my signature.

Q. I direct your attention to the second page, the last paragraph:

"The objection on our part to eliminating Section 22 is the fear that Hartford, once freed of our veto, might be inclined to grant licenses recklessly and without regard to the state of the market or good of the industry. Believe that this fear is much exaggerated. We have been dealing with Hartford under our 1924 agreement for more than six years now, and have never found any tendency on their part to act recklessly or in disregard of basic conditions. Believe we may safely conclude that their attitude in the future will not be different."

You wrote that, did you not?

[fol. 3159] A. I wrote the whole letter, I have no doubt.

The Court: What exhibit is that?

Mr. Isseks: No. 409.

Q. Those were part of the considerations which you and Mr. Levis took into account, were they not, in deciding to enter into the modification of the 1924 contract, were they not, in deciding to modify of the 1924 contract, executed in February, 1931?

Mr. Middleton: Objection, for the reason that this gentleman would not know what Mr. Levis took into account.

(Question read.)

The Court: The objection will be sustained.

Q. Did you have any talks with Mr. Levis before you entered into the modification, February 22, 1931?

A. I have no recollection of it. I assume I did.

Q. Do you have any recollection of any of the conversations you had with Mr. Levis?

A. Not at all.

Q. Your recollection——

A. —is confined to what is set forth in the letter.

Q. You do remember what is set forth in the letter?

A. I just read it.

Q. That refreshes your recollection?

A. No, it does not refresh my recollection. I can see my signature. I assume that is what I wrote at the time. I don't recollect anything about it.

[fol. 3160] Q. What is set forth in the memorandum you wrote were the considerations you had in mind in giving your advice to Mr. Levis?

A. I assume so; I would not have put them down, if they had not been.

Q. During the period you were working for Owens, you occasionally saw Mr. Dorsey, did you not?

A. Very frequently.

Q. He represented the Hartford people, did he not?

A. Yes, sir.

Q. He also represented the Corning people, did he not?

A. We never had anything to do with the Corning people during the time I was acting; hardly knew they existed; they were not competitive in any way; did not make containers; all we knew about them was that they had a financial interest in Hartford. I never went there; did not know anything about it.

Q. Your company made tumblers?

A. No, sir.

Q. You never made tumblers?

A. No, sir.

Q. Your company has never made a glass tumbler?

A. Within the last two or three years, we took over the Libbey Glass Company, which made tumblers; and we have since been carrying on that business. Prior to that time the Owens Bottle never had made tumblers; and I don't think the Illinois Glass Company had ever made tumblers.

[fol. 3161] Q. Was your company interested in making tumblers?

A. Not in the slightest degree. We bought all our tumblers.

Q. You knew, did you not, or heard, that Corning had a ribbon machine?

A. Yes; but that was not used for making tumblers in those days.

Q. Do you remember talking with Mr. Dorsey and asking him whether he could not find out whether your company could get rights on the Corning ribbon machine?

A. I don't remember it.

Q. I show you Government's Exhibit No. 382, in evidence here, certified to as a true copy by Corning Glass Works, and ask you whether that does not refresh your recollection that you had a conversation with Mr. Dorsey, in which you told him about your company's interest in the production of tumblers on the ribbon machine?

A. I have no doubt this happened. I don't remember it.

Thereupon, Government's Exhibit No. 382 was read to the Court by Mr. Isseks, of counsel for the government.

Mr. Sayles: Objection to it. He says he does not remember it.

Mr. Isseks: I submit that the witness said it took place.

Mr. Middleton: He says he does not recall it at all. He does not even say that that refreshes his recollection.

[fol. 3162] The Court: That was admitted at the time.

Mr. Isseks: For a limited purpose.

Q. Now, Mr. Carter, you say it did not take place?

A. I don't know whether it took place or not. I just assume it might have taken place. I don't remember anything about it.

Q. Will you say you did not talk to Mr. Dorsey about the subject matter of the letter?

A. I would not say that. At that time there never had been any tumblers made on the ribbon machine. Possibly Mr. Levis possibly thought we might make tumblers on the ribbon machine. If he did he might want to have a talk. At the time Mr. Levis thought Owens-Illinois Glass Company ought to make containers of all kinds, and everything related to them; and he had, no doubt, had his eyes out to the possibilities of enlarging the business.

Q. He told you when you saw Mr. Dorsey to ask him whether there was any chance of your company's——

A. I have not the slightest recollection of his ever asking me such a thing. Seeing Mr. Dorsey's letter, it might have happened.

Q. You do not question, Mr. Dorsey having said it, it did not take place?

A. No.

Q. In fact, you would be inclined to say it did take place, if he says so?

Mr. Sayles: Objection to that as calling for a conclu-
[fols. 3163-3164] sion.

Mr. Middleton. It is an argument to the witness.

The Court: He may answer.

A. Mr. Dorsey is a very reliable man. I would not question anything he says of that sort.

Q. When I first asked you the question, before we had the barrage, you had no doubt that it took place: you are still of that opinion?

A. I am just accepting Mr. Dorsey's statement in the letter. That is all as far as I am concerned.

Q. You have volunteered that Mr. Levis was interested in getting into all lines of the glassware business?

A. No, I said that that was not correct.

Q. What did you say?

A. All lines of the glass container business, or anything closely related to it. He never had any thought of going into Corning's line of production at all, so far as I know.

* * * * * * *

[fol. 3165] Q. You testified a little while ago about your company's business. When did you stop becoming an executive of your company?

A. I think that was in April, 1933.

Q. You continued with the company in what capacity?

A. As counsel, on patent matters?

Q. They furnish you with an office, do they not?

A. I have no regular duties; but matters concerning patents are referred to me from time to time, for special opinion.

Q. They furnish you with an office, do they not?

A. Yes, sir.

Q. Secretarial help, too?

A. Yes, sir.

Q. You are on an annual salary basis?

A. I would not claim they were tied up a year.

Q. You have no other clients? Do you have any other practice?

A. I would say I am open to receive them.

Q. My question is, whether you have any?

[fol. 3166] Mr. Middleton: Objection to that. I don't think that is a fair question.

The Court: Yes, I think he has answered the question fully.

The Witness: A few years ago, I was employed by the Corning Company, on a separate matter of their affairs, and that had nothing to do with my Owens Bottle employment. It involved tube machine patents of theirs.

Q. Do you remember a problem came up in connection with the Owens Company developing a bulb machine in competition with the ribbon machine?

A. I remember there has been more or less discussion about possibilities of that sort.

Q. You were asked to write a memorandum regarding it?

A. I don't know whether I was or not. I very likely did.

Mr. Isseks: I now have marked as Government's Exhibit No. 672 a memorandum dated September 15, 1936. It is on Owens-Illinois Glass Company intra-company correspondence; attention C. B. Belknap; subject: "Proposed Soubier Bulb Machine"; signed, "Henry W. Carter".

Q. I ask you, Mr. Carter, whether you wrote that memorandum?

A. Yes, I wrote it.

Mr. Isseks: I offer it in evidence, Your Honor.

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[fol. 3167] The Court: It is admitted for the limited purpose of proof.

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[fol. 3168] Q. Did the Owens Company ever go into the bulb business on the Soubier machine?

A. We never had a Soubier machine.

Q. You never developed it?

A. Purely on paper.

Q. They never took your recommendation?

A. No, the management apparently did not agree with me.

Q. I show you Government's Exhibit No. 552, a letter [fol. 3169] purporting to be written by you to Mr. Brown, May 31, 1925, regarding the suggestion to Mr. Peiler

and Mr. Soubier of getting together in the making of investigations. Did you write that?

A. Undoubtedly I did.

Q. I show you Government's Exhibit No. 553, dated April 13, 1926, from you to Mr. Brown, regarding a report made by Mr. Black on Obear-Nester; and ask you whether you wrote that?

A. I wrote that.

Q. I show you Government's Exhibit No. 554, March 8th, 1928, addressed to Mr. Hatch, signed by you as Treasurer, regarding Soubier's report as to Brockway Machine Bottle Company, and ask you whether or not you wrote that?

A. I have no doubt I wrote it.

Q. I show you Government's Exhibit No. 555, a letter dated November 28, 1928, addressed to Goodwin Smith, re Owens-O'Neill Suction Machine, and ask you whether it is your signature?

A. It is, yes.

Mr. Isseks: That, Your Honor, relates to this proposed trip to Knox.

The Court: 555?

Mr. Isseks: 555, yes, Your Honor.

Q. Do you remember a report made by Mr. Soubier regarding the trip to the Knox Bottle Company?

A. I have no doubt he did make a report; I don't remember anything in particular about it at this time.

[fol. 3170] Q. Did you send a copy of that report to the Hartford people?

A. I don't remember that.

Q. Either way?

A. I remember his being there, and he undoubtedly reported.

Q. To you?

A. Yes, sir.

Q. Do you remember whether you sent a copy of the report to Hartford?

A. No, I do not. I naturally would.

Q. I show you Government's Exhibit No. 558, and ask you whether you wrote that, December 31, 1928, to Mr. F. Goodwin Smith, as regarding some report of a Mr. Murphy with respect to Ball Brothers?

A. I don't recall it, but I have no doubt I wrote it.

Q. I show you Government's Exhibit No. 559, dated April 18, 1929, addressed to Mr. F. Goodwin Smith, purporting to have been written by you, regarding various matters, including Mr. Soubier's effort to get into the Ball Brothers' plant, and ask you whether you wrote that letter?

A. Yes, I wrote it.

Q. I show you Government's Exhibit No. 563, dated March 17, 1930, addressed to Mr. Soubier, enclosing attached list of places to visit, and ask you whether you wrote that memorandum, sir?

A. I have no recollection of it, but I have no doubt that I did.

Q. I show you Government's Exhibit No. 564, dated [fol. 3171] March 31, 1930, addressed to Mr. F. Goodwin Smith, and ask you whether you wrote that one;

A. I have no doubt I did.

Q. I show you Government's Exhibit No. 562, dated March 19, 1930, addressed to Mr. F. Goodwin Smith, and ask you whether you wrote that?

A. I have no doubt I wrote it.

Mr. Isseks: There are no further questions, Your Honor, with the understanding that if the subpoena which has been served upon Owens-Illinois results in the production of any documents as to which this witness has any knowledge, we may have the privilege of recalling him.

The Court: You may have that privilege.

(Afternoon recess.)

[fol. 3172] Cross-examination by Mr. Williams.

Q. I would like to get in first a little bit, Mr. Carter, about your qualifications in patent matters. What education did you have in that respect?

A. Well, I entered the examining corps of the Patent Office during the Harrison administration.

Q. First, what technical school did you attend?

A. Worcester, Polytechnic.

Q. Worcester, Massachusetts?

A. Yes.

Q. And then in the Patent Office?

A. Yes, after some shop work.

Q. Then after you left the Patent Office, as you testified yesterday, you went to Chicago and practiced patent law there?

A. Yes.

Q. In what courts were you admitted to practice?

A. In the court in Illinois.

Q. In the state courts of Illinois?

A. In the State of Illinois and the United States Court at Chicago and the Supreme Court of the United States.

Q. You mean the District Courts and the Seventh Court of Appeals when you say the United States Court at Chicago?

A. Yes.

Q. You graduated from the Wooster Polytechnic in what year?

A. 1886.

Q. Mr. Carter, I hand you photostatic copy of an original letter on the letterhead of the Owens Bottle Company, [fol. 3173] dated June 20, 1928, to Robson Brown, and ask you to look at the end of that letter at the signature and state whether that is your signature?

A. That is my signature.

Q. There is a recitation in the letter that you are enclosing a copy of that letter that you had on June 8th written to Mr. Graham which you enclosed with your letter to Mr. Brown. It is marked Exhibit 0-5042 and has your typewritten signature. Do you remember whether——

Mr. Isseks: No question as to authenticity.

Mr. Williams: I will simply include that one enclosure in the letter.

Q. I will also offer two other letters which he says he enclosed, from Lynch to Soubier. I hand you Exhibit 0-5043, a letter dated July 23, 1928, to Mr. R. D. Brown. I will ask you whether that is your signature at the bottom?

A. That is my signature.

Mr. Williams: I offer these exhibits 5041, 2, 3 and 4.

The Court: What is 4?

Mr. Williams: 4 is one of the enclosures with Exhibit 0-5041, of which Mr. Isseks says he does not question the authenticity.

The Court: Three enclosures?

Mr. Williams: Yes, there were three enclosures in that first letter. Exhibit 0-5044, the last one, June 13, 1938, is a [fol. 3174] copy of letter from James Lynch to Soubier. And then I offer Exhibit 0-5045, which is a copy of a letter from Soubier to Lynch dated June 15, 1928.

The Court: They may be admitted.

(Mr. Middleton reads Exhibit 0-5041.)

Mr. Middleton: Perhaps I ought to announce the first enclosure referred to, which is a letter of June 8, addressed to Graham. This letter is Exhibit 5042, dated Toledo, June 8, 1928, written by Henry Carter to J. B. Graham.

(Mr. Middleton reads Exhibit 5042.)

Mr. Middleton: The other two enclosures, one dated June 13, 1928, is Exhibit 0-5044, written by Lynch to Soubier.

(Mr. Middleton reads Exhibit 0-5044.)

Mr. Middleton: The other enclosure is 0-5045, a letter dated June 15, 1928, from James W. Lynch of the Lynch Company, to L. D. Soubier. That is two days after 5044 was written.

The Court: All right.

(Mr. Middleton reads Exhibit 0-5045.)

Mr. Middleton: Now, those were the enclosures which were sent with Exhibit 5041 to Brown.

The next is Exhibit 0-5043. They are numbered a little out of order. It is a letter dated July 23, 1928, from Carter to Brown.

(Mr. Middleton reads Exhibit 0-5043.)

Mr. Williams: Exhibit 5046 is stipulated as genuine, which is a letter from S. F. Parham——

[fol. 3175] Mr. Isseks: (Examining letter.) That is all right with us.

The Court: No objection to it?

Mr. Williams: It is dated July 25, 1938, from Graham to Carter.

The Court: It may be admitted.

(Mr. Middleton reads Exhibit 5046.)

Mr. Williams: We offer Exhibit 0-5047, which is the reply by Mr. Brown.

Mr. Isseks: It is stipulated between Hartford and the Government Exhibit 0-5047 is a letter dated August 13, 1938, addressed to the witness, signed by Col. Brown.

The Court: It may be admitted.

(Mr. Middleton reads Exhibit 0-5047.)

Q. Mr. Carter, you said during the recess you would like to make a slight correction in your testimony about Mr. Naylor?

A. Yes. I don't know but something that I said was rather derogatory or perhaps not sufficiently appreciative of Mr. Naylor. Mr. Naylor came into contact with our organization about ten years ago when Mr. Levis asked me to recommend some young lawyer to attend to some private affairs of his. I recommended Mr. Naylor, who was at that time in practice in this city, but was very young in the practice. Mr. Levis was very much pleased with his experience with Mr. Naylor in that matter that I spoke of, and, a year or two later, asked me if I could not make a place for him in the patent department, which I accordingly did. This, roughly speaking, was ten years [fols. 3176-3177] ago. Mr. Naylor at that time was a member of the bar of this state, but quite inexperienced in relation to patent matters. I gave him a desk in my office and took him around as an apprentice, so to speak, in our specialty. Soon after that—that is, within the next two years—Mr. Balknap was brought into the organization by Mr. Levis and established a regular legal department, which included the patent department. Mr. Naylor has ever since been connected with the legal department and has grown to be one of the important figures in our organization and has especially dealt with contracts relating to our patent connections.

* * * * * * * *

[fol. 3178] Mr. Rufus Day: In order to save our record, we ask the Court, on behalf of the Glass Container's Association, to strike from the record that portion of Government's Exhibit 667, being a one-page letter dated August 9, 1929, signed by Owens-Illinois Glass Company, by the witness, H. W. Carter to R. M. Eldred, manager of Hartford-Empire Company, that part of paragraph 4 which reads as follows: "He is (Mr. Levis) however, in hopes that the Laurens Company will not fail to recognize the somewhat

demoralized state of the industry under present conditions, and that with manufacturing capacity so far in excess of present demands, increases in operation will likely work out disastrously if not kept within the reasonable bounds suggested by the Glass Container Association."

* * * * * * *

[fol. 3179-3181] The Court: The Court has heretofore made himself clear, I think, on that subject, that whatever a man says as quoting the conversation of another man to him, isn't received in proof of the truth of that conversation or what it is directed to. The purpose of the receipt of the exhibit is to show merely the state of mind, in this instance of Henry W. Carter, who was the author of the letter.

[fol. 3182] Mr. Isseks: I will call Mr. Alexander D. Falck.

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Thereupon the government called as a witness, ALEXANDER D. FALCK, who, being first duly sworn, testified as follows:

Direct examination.

By Mr. Isseks:

Q. Mr. Falck, with what company are you connected?

A. I am connected—you mean in relation to this case?—with the Corning Glass Works, the Hartford-Empire Company. Those are the only ones that are concerned in the case.

Q. You are connected with the Empire Machine Company, that was dissolved last year?

A. Until it was dissolved.

Q. Before becoming connected with the Corning Glass Works, you were practicing law?

A. Yes.

Q. You are a member of the New York Bar?

A. Yes.

Q. Have been since when?

[fol. 3183] A. 1901.

Q. Before you became connected with the Corning Glass Works you were a partner of Mr. Sayles, were you not?

A. Yes.

Q. What year did you become connected with the Corning Glass Works?

A. I first, as a member of my firm, performed services for the Corning Glass Works in 1911, as a member of my firm, outside counsel.

Q. When did you become connected with the Corning Glass Works in an official capacity, as an executive?

A. Well, as assistant to the president, and counsel, in 1918.

Q. Did you sever your connection with your law firm at that time?

A. No; for practical purposes; but nominally, I have always been a member.

Q. You still are?

A. Yes.

The Court: You were assistant to the president in 1918?

The Witness: Yes, sir.

The Court: What month and day?

The Witness: Beginning with January 1, 1918.

Q. Do I understand you correctly to say since you have been associated with Corning you have retained your membership in the firm at Elmira?

A. Yes, at all times.

Q. After you became assistant to the president in 1918 [fol. 3184] did you rise in the organization of the Corning Company to another capacity?

A. I became vice-president in 1919 and president in 1920.

Q. Later on chairman of the board of directors?

A. 1928.

Q. You have been chairman since then?

A. Yes, sir.

Q. Now, to go back to the Empire Machine Company, did you ever have any official duties with the Empire Machine Company?

A. Well, I was made president of the Empire Machine Company in about 1915.

Q. And continued until its dissolution in 1940?

A. That is correct.

Q. Throughout this period, while you were an officer of the Corning Company, were you also a director?

A. I became a director either in 1918 or 1919, I am not sure which.

Q. And have continued since then?

A. Yes.

Q. In 1922 you became a director of Hartford?

A. Yes.

Q. Have continued since that time?

A. I think it was just over in the year 1923 when we organized the Hartford.

Q. As soon as it was organized you became a director?

A. Yes.

Q. And have continued since then?

A. That is so.

Q. I would like to get a little understanding of Corning. [fol. 3185] Corning isn't a corporation that has stock listed on the Exchange?

A. Not listed on any Exchange; no.

Q. Approximately how many stockholders do you have of Corning at the present time?—a rough figure.

A. I am sorry, I cannot tell you, because the former stockholders of the Macbeth-Evans Glass Company are now stockholders of Corning. I don't really know. Perhaps 300; that is quite a guess.

Q. Before you took over Macbeth-Evans, how many stockholders were there of Corning, approximately?

A. I would say about thirty, or a little more, perhaps.

Q. In what year did you take over Macbeth-Evans?

A. At the close of 1936.

Q. Up to that time there were only approximately thirty stockholders in Corning?

A. Yes. There may have been a few more employees being sold stock.

Q. Is it a fair statement, or false, to say it was a closely-held company up to 1936?

A. It was held by about thirty stockholders.

Q. At the present time is it fair to say it is a closely-held corporation?

A. My guess is about 300; I am not sure.

Q. Empire Machine Company, before it was dissolved in December, 1940—was it, this last year?

A. Yes.

Q. Subsequent to this suit being started?

A. In 1940, December.

[fol. 3186] Q. How many stockholders were there of Empire Machine, sir?

A. I think about twelve.

Q. And principally the Houghton family?

A. The Houghton family had 68 or 70 per cent.

Q. Who were the other people who were not in the Houghton family, other Corning people—yourself, for instance, you were a stockholder, were you not?

A. Yes. I live in Elmira, N. Y., not in Corning.

Q. I am sorry.

A. Dr. Arthur L. Day resides in Washington, D. C.; William Sinclair and Charles Githler, former residents, now deceased, their estates owned it.

Q. Is it a fair statement that the stockholders of Empire Machine Company were former Corning associates and people connected with Corning in the past or at the present time, up to the time of the dissolution of the Empire Company?

A. Well, it would not be an accurate statement, quite. The majority of the stock, as I have said, 70 per cent. is held by the Houghton family, and others by persons associated with Corning; but always there was Empire Machine stock, always has been, owned by persons who had no stock in the Corning Glass Works.

Q. And about what per cent. was that, approximately?

A. Now, I would say about 20 per cent., I would say, of the Empire stock, at the time of its dissolution last year.

Q. Who had no interest in Corning?

A. Who had no stock in Corning.

Q. Now, in 1922, as part of the arrangement by which [fol. 3187] Empire Machine acquired a stock interest in Hartford-Empire as organized, Empire Machine acquired some 43 per cent. of the stock of Hartford-Empire, did it not,—or was it 45 per cent?

A. Nominally took 45, and they turned back 10 per cent of that, so it had 41½ per cent.

Q. That 10 per cent. was turned back?

A. Issued to employees.

Q. Now, the board of directors of Corning consisted of how many people during this period from, let's say, 1918, when you first became a director, up to the present time?

A. Well, it has variously, as I recall it, been five and seven.

Q. Do you have seven now?

A. I think seven now.

Q. Do you remember approximately the time you changed from five to seven?

A. I think quite recently, '36 or '37.

Q. In the last year or two?

A. About 1937; yes.

Q. When you had five directors, you were one of the directors, were you not?

A. Yes.

Q. I am talking—let's take the period about 1922.

A. Yes.

Q. Which of the Houghtons was a director then?

A. Alanson B. Houghton, Arthur A. Houghton, George B. Hollister—what year do you wish me to take?

[fol. 3188] Q. Take the period 1922, the period when you first came to the company, in the early stages—Dr. Day?

A. William Sinclair, Hollister, and myself; I think that is five. I don't remember whether at that time Dr. E. C. Sullivan was a director, if not, he became one subsequently. You asked me about Dr. Day. He was a director for two years, when he lived in Corning.

Q. About the same time how many directors, that is in '20 or '22, in the period in there, were there of Empire Machine Company?

A. I think there were always five.

Q. And who were those gentlemen—the three Houghtons, yourself, and who else?

A. Two Houghtons, Day and Githler and myself.

Q. Now, at the time of the dissolution of Empire Machine in 1940, how many directors did you have in Corning—seven?

A. I think so.

Q. And there were two Houghtons——

A. Amory Houghton.

Q. And what other Houghton?

A. Arthur Houghton, Jr.

Q. Anybody else of the Houghton family?

A. Alanson B. Houghton.

Q. Three Houghtons and yourself,—four?

A. Perhaps more than seven. That is four. There was Mr. Glen W. Cole, George D. Macbeth, James L. Peden, William H. Curtiss, and E. C. Sullivan.

[fol. 3189] Q. Nine?

A. Nine.

Q. How many of those gentlemen were directors of the Empire Machine?

A. How many of them?
Q. Yes, at the time of dissolution?
A. Three.
Q. Who were they?
A. Amory Houghton, Arthur Houghton, Jr., and myself.
Q. And who were the other two directors at that time?
A. Mr. Alan Hawley and Mr. William Sinclair.
Q. Now, back in 1922 or '23, when you said you became a director of Hartford-Empire, did any of your other associates of either Empire Machine or Corning become directors of Hartford-Empire?
A. I think the Messrs. Houghton—that is, Alanson B. and Arthur A. Houghton——
Q. Became directors with you?
A. Yes, sir.
Q. Weren't there four so-called Empire directors?
A. There was always a question whether Mr. Dorsey, as a director, represented Empire or Hartford. He was a director, I believe, V. M. Dorsey, for a short time, of Hartford-Empire.
Q. Then he stopped at some stage?
A. Yes.
Q. And somebody else took his place; who was that gentleman? Who are the so-called Corning directors today, besides yourself?
[fol. 3190] A. Amory Houghton, Arthur Houghton, Jr., Alanson B. Houghton and myself.
Q. How long have you been a director?
A. Since 1923.
Q. Except for the short period of time when Mr. Dorsey was a director——
A. Did you ask me how long I had been a director?
Q. How long did these four gentlemen?
A. Mr. A. B. Houghton has been a director from the beginning; I have been a director from the beginning; Mr. Amory Houghton was made a director; Mr. Arthur Houghton, Jr., after the death of his father.
Q. Which was when, please?
A. About 1928.
Q. When did Mr. Amory Houghton become a director?
A. Mr. Amory Houghton became a director—I can't remember—in the very early stage of it.
Q. Whom did he succeed, if you remember?

A. It may be he succeeded his uncle, Mr. Arthur Houghton, and Arthur Houghton, Jr., came on later. I cannot remember because I haven't checked up on it.

Q. How many directors of Hartford-Empire have there been since 1922?

A. There have been nine, and eight, sometimes, when there has been a vacancy.

Q. Right now there have been eight since about 1938?

A. I think so.

Q. What is the nature of the business of Corning Glass [fol. 3191] Works, since you have been connected with it?

A. It is a manufacturer of various products that to a very considerable extent require the use of special glasses. The railway signal glasses are colored. The low-expansion glasses that go into many industrial uses now, and laboratory glassware, so-called baking ware, cooking dishes, tubing, with special reference to clinical thermometer tubing, another type of tubing for incandescent lamps, and the bulbs for incandescent lamps; many special glasses for scientific use, absorption glasses, heat absorption, color aborption, for various transmission purposes. Those are the products in a general way. I could go on with a long list of special items. That covers the bulk.

Q. You manufacture various kinds of other ware, do you not?

A. Yes.

Q. Various different types of glassware used in the household?

A. Yes, some table ware.

Q. Where do you have your plant located?

A. The main plant is in Corning, N. Y., another plant in a different location in the same city, a plant in Central Falls, Rhode Island, a plant in Wellsboro, Pennsylvania, a plant in Charlevoi, Pennsylvania; those are the directly-owned plants.

Q. Do you have any subsidiaries?

A. Not in the glass business.

Q. You have one subsidiary in which you have a half-interest, known as the Owens-Corning Fiber Glass Company?

A. Yes, if you call that a subsidiary.

[fol. 3192] Q. The other 50% was owned by Owens?

A. Yes.

Q. When was that organized? It is not in this case, but for background. '37 or '38?

A. Yes, about that.

Q. How long have you been a director of that company?

A. I am not.

Q. Some of your associates are, are they not?

A. Yes.

Q. Have you been connected in the management of the affairs of the Company in the last few years?

A. Not since the summer of 1928.

Q. Since that time you have been chairman of the board and your interests are primarily financial, are they not?

A. No. Whenever I am called upon for advisory work; I may even go into production matters.

Q. But you are called in occasionally?

A. Yes.

Q. And you are a stockholder, are you not, of course?

A. Yes.

Q. You were a stockholder, you said, of Empire Machine Company?

A. Yes.

Q. And since the dissolution of Empire Machine, December, 1940, you have been a stockholder in Hartford-Empire?

A. Yes.

Q. Now, has your company ever been in the so-called general container field—bottles?

A. No.

[fol. 3193] Q. You know what I mean by "general containers"?

A. Yes.

Q. What about tumblers, do you manufacture tumblers?

A. To an extent.

Q. Since when?

A. Oh, we have manufactured tumblers a good many years ago, but never largely, and more largely, I think, since the Macbeth-Evans Company was consolidated.

Q. Approximately how many employees do you have directly?

A. At present a little over 7,000.

Q. And do you have a general understanding of your total volume of business by your company for the year 1940, last year?

A. No, I couldn't. I might be two or three million off.

Q. All right. I will take your figure with two or three million off. You are chairman of the board of directors. What is your idea of what your total volume was?

A. Eighteen or twenty million, I think.

Q. For all phases of your business?

A. Yes.

Q. What about 1939—about the same?

A. Somewhat less.

Q. You weren't employed, if I may use that term, after you became an executive, as distinguished from your employment as a counsel, prior to 1918, when you became assistant to the president?

A. That is correct. Prior to 1918 I wasn't on the payroll, I was a lawyer.

Q. But you were familiar, were you not, with the 1916 [fol. 3194] contract between Hartford-Fairmont and Empire Machine, which is Government's Exhibit 1 in this case?

A. Well, I was familiar with it.

Q. That is what I mean. When it was drawn you acted as the lawyer in connection with the execution of that contract, did you not?

A. Yes.

Mr. Isseks: Now, at this time I would like to have marked as the next government's exhibit, a letter dated October 11, 1919, written by the witness, addressed to Mr. F. Goodwin Smith, on the stationery of Corning Glass Works, Government's Exhibit 673, stipulated as to genuineness by Hartford-Empire at page 2 of the stipulation.

I offer it in evidence, Your Honor.

The Court: It may be admitted, over objection.

(Government's Exhibit 673 read by Mr. Kramer.)

Q. Did you write that letter, sir?

A. Yes, sir.

Q. Now, Mr. Falck, you remember that a time came when the Hartford-Fairmont group approached your company with a view towards bringing about a closer arrangement between the two companies, Empire Machine and Hartford-Fairmont?

A. Yes. I couldn't say as to who made the first approach.

Q. But there were negotiations?

A. Yes.

Q. Do you remember a meeting held at South Dartmouth, Massachusetts, at the home of one of the Houghtons, in the summer of 1919?

[fol. 3195] A. I vaguely remember a meeting there. I was there a good deal. I think I remember when Mr. Smith was there.

Q. You do?

A. I think I do.

Q. Do you have any recollection of what took place at the meeting?

A. No.

Q. Any general recollection?

A. No. I have learned during the trial of this case we had a discussion of consolidating Empire and Hartford.

Q. By that statement you mean you have seen some of the exhibits?

A. Yes.

Q. And you have read them?

A. Well, I heard Mr. Smith testify about that meeting.

Q. Does his testimony refresh your recollection at all?

A. I believe we had such a meeting. I don't remember anything about it.

Q. And the purpose of the meeting was in an effort on behalf of both parties to bring about a closer arrangement?

A. I think so, yes, it was.

Mr. Isseks: At this time I would like to have marked as the next government's exhibit, 674, a photostatic copy of a letter dated March 6, 1920, written to Mr. F. Goodwin Smith by the witness, stipulated as to genuineness by Hartford-Empire Company.

* * * * * * *

[fol. 3196] The Court: It may be admitted, over objection.

(Government's Exhibit 674 of March 6, 1920, read by Mr. Kramer.)

Q. Mr. Falck, did you write that letter?

A. Yes.

Mr. Isseks: At this time I would like to offer as Government's Exhibit 675, the reply, dated March 10, 1920, addressed to the witness, as president of the Corning Glass Works, by Hartford-Fairmont Company by F. Goodwin

Smith, which has been stipulated as to genuineness by Hartford-Empire Company.

The Court: It may be admitted.

(Government's Exhibit 675 read by Mr. Kramer.)

[fol. 3197] Mr. Isseks: At this time, Your Honor, I offer as Government's Exhibit 676, photostatic copy of a letter dated June 8th, 1920, addressed to Mr. F. Goodwin Smith, signed by the witness and stipulated as to genuineness by Hartford-Empire Company at page 5 of the Stipulation.

Mr. Sayles: If the Court please, the same situation with reference to this letter. There are a few inaccuracies on the photostat.

Mr. Isseks: We will take the carbon copy gladly.

The Court: Very well.

Mr. Isseks: I offer it in evidence, Your Honor.

The Court: It may be admitted.

Thereupon, Government's Exhibit No. 676 was read to the Court by Mr. Kramer, of counsel for the government.

Q. You wrote that letter, did you not?

A. I did.

Mr. Isseks: At this time, Your Honor, I offer in evidence as Government's Exhibit 677, copy of a letter, stipulated as to genuineness by Corning Glass Works, Item 149, dated October 30, 1920, addressed to the witness by V. M. Dorsey, copies of Mr. F. G. Smith and Mr. Honiss.

The Court: It may be admitted.

[fol. 3198] Thereupon, Government's Exhibit No. 677 was read to the Court by Mr. Kramer, of counsel for the government.

Q. You received that letter, did you not, Mr. Falck?

A. I don't know.

Q. You don't question it?

A. If it was in the Corning files we undoubtedly did. I have no recollection of it whatever.

Q. What relation generally was there between your company and the General Electric Company about the time of this letter, which was dated November 30, 1920?

A. You mean the Corning Glass Works or Empire Machine?

Q. I mean the Corning Glass.

A. We were vendors of bulbs to the General Electric Company.

Q. What about the Empire Machine?

A. The Empire Machine Company had patents under which the General Electric Company had rights for blowing bulbs.

Q. You were interested in getting the Hartford-Fairmont rights in connection with bulbs for the purpose of conferring those rights to the General Electric Company?

A. We were obligated if we acquired an outside right to give them an equal opportunity.

Q. You mean General Electric?

A. Yes, and Hartford was trying to make an agreement with them.

Q. With General Electric?

A. Yes.

Q. They didn't, did they?

A. No, they didn't.

[fol. 3199] Q. Any rights General Electric got came through the Empire Machine Company after the contract was made in 1922?

A. They got no rights under the contract.

Q. Did you give them any rights in connection with the use of the Hartford Feeders to make bulbs?

A. General Electric got rights under the paddle feeder and I think they used it at the time of this discussion.

Q. Did General Electric get any rights under the needle feeder?

A. No.

Q. None?

A. No. They decided not to take it. Hartford was negotiating with them for it.

Q. Do you remember in connection with the organization of the Hartford-Empire Company whether or not that company should be permitted to manufacture and sell glassware?

A. I have no recollection of it. I had none until I heard them in the case here.

Q. Does that refresh your recollection, sir?

A. No.

Q. I show you Government's Exhibit 15, dated February 21, 1921, which is a letter from Knox Smith to Mr. Sayles. The first paragraph states,—"We have a good deal of doubt

as to Mr. Falck's suggestion for striking out of the corporate purposes the words 'to manufacture and sell glass' ". Does that refresh your recollection?

[fol. 3200] A. No. That is what I referred to when I said during the trial it came to my attention.

Q. Have you any question that you made that suggestion?

A. I have no idea. There was a great deal of detail at that time.

Q. Do you know whether or not that took place in connection with whether or not Hartford could manufacture and sell glassware?

A. On the vote of some stated percentage of stock, or am I correct, the unanimous vote of the directors?

Q. That is right. So that if Empire Machine acquired 41 per cent of Hartford-Empire they, in effect, had a veto power as stockholder and director?

A. Yes. That is what that provision was put in the certificate for.

Q. At this time I offer as Government's Exhibit 678 a letter dated February 28th, 1921, addressed to F. Goodwin Smith and signed by the witness, stipulated as to genuineness by Corning Glass Works.

The Court: It may be admitted.

Thereupon, Government's Exhibit No. 678 was read to the Court by Mr. Kramer, of counsel for the government.

Q. Mr. Falck, you wrote that letter, did you not?

A. I think I did.

Q. What happened to the Howard feeder some time in 1921 or '22, do you remember?

A. It was in '22, I think, that the Hartford-Fairmont [fol. 3201] Company, either by acquiring the stock of the Howard or in some manner acquired the Howard Patent rights.

Q. Did you participate in the negotiations in connection with that deal?

A. No, I did not.

Q. You were advised of it?

A. From time to time things were said about it.

Q. And you approved it?

A. I think I did.

Q. Do you remember in connection with the contract that was being prepared between Hartford on the one hand and Corning and Empire Machine on the other hand, some question came up about your company going into the general container line?

A. Why, I don't know whether it is mentioned. That is a long time ago.

Q. I appreciate that. I am trying to get your recollection first?

A. Our company was not in the general container field.

Q. I realize that. Don't you remember your company was considering going into it?

A. We had from time to time talked about going into this line or that line, which might have been the container field. I have no specific recollection of it though.

Q. I show you Government's Exhibit 17, which purports to be a letter, carbon copy of a letter dated February 13, 1922, that you wrote to Mr. F. Goodwin Smith, and I will ask whether you wrote that letter. It is stipulated, for [fol. 3202] your information, as genuine by your company. Have you read that, sir?

A. Yes.

Q. Did you write it, sir?

A. I would not know, but I think it quite likely.

Q. Do you have any recollection that you did have an idle plant in Kingsport in 1922?

A. Yes.

Q. And were considering going in the general container field, preferably milk bottles, Coca-Cola bottles, and fruit jars?

A. We had the idle plant, and the letter does state just about the extent to which we considered going into the business.

Q. You remember you got a letter from Mr. Knox Smith about your letter to Mr. Goodwin Smith, which is Government's Exhibit 18, and which is stipulated as to genuine by Corning Glass Works, in which the situation so far as the Hartford people were concerned was set up?

A. I don't recall it, but that is addressed to me, and stipulated as genuine by Corning, so I have no doubt I received it.

Q. But you did not go into the container field?

A. No.

Q. But you did seriously consider it?

A. No. The letter does not say we were seriously considering it.

[fol. 3203] Q. The letter does not say you were jokingly considering it?

A. No.

Q. It says, "We have an idle factory in Kingsport. Some of our people will never be satisfied until I can tell them explicitly what rights to your feeders and forming machines it is possible for you to grant in the general bottle and container field"?

A. That is true.

Q. There were some people interested?

A. That is true.

Q. They were serious?

A. At that time they were inquiring.

Q. In any event you have never gone into the general container bottle field?

A. We have not.

Q. To this date?

A. No.

Q. You remember you finally signed the general contract, the formation agreement, which is Government's Exhibit 19 here?

A. Yes. We made that contract.

Q. Under that contract your company was given exclusive rights in a certain field?

A. Yes.

Q. And you gave certain rights to Hartford exclusively in certain fields?

A. That is right.

[fol. 3204] Q. What did your company have at that time in the way of any inventions or applications or patents as to machinery that could be used in the general container field, if you remember?

A. We had no machinery. I haven't the slightest idea what patents we had then, or what inventions we had then. I could check that up.

The Court: We will suspend at that point.

(Recess 15 minutes.)

[fol. 3205] Mr. Isseks: At this time, Your Honor, I should like to offer, as Government's Exhibit 679, a letter

dated November 5, 1921, addressed to the witness, marked "Confidential", written by V. M. Dorsey; stipulated as to genuineness by Corning, Item 166.

Mr. Sayles: I think, if Your Honor please, I will object to that as privileged; from Mr. Dorsey to the witness, is that what it is?

Mr. Isseks: That is right. I submit, Your Honor, a reading of the document shows——

The Court: What was Mr. Dorsey's position in 1921?

Mr. Isseks: I shall ask the witness, Your Honor.

I will point out, Your Honor, it is alleged in the bill of particulars furnished Corning that Mr. Dorsey was a co-conspirator since 1916. And I thought Your Honor admitted other documents on that basis. He was representing at various times, according to the testimony, Corning and Hartford: sometimes one, sometimes the other, and sometimes both.

Q. Is that not true, Mr. Falck?

A. As any other lawyer, he represented others and Corning; but he represented Corning and Empire for a great many years.

Q. He represented Hartford, too, did he not, at one time?

A. And other clients.

The Court: On November 5, 1921, did he have any official capacity in which he was serving Corning?

[fol. 3206] Mr. Isseks: Not that I know of.

The Witness: He was outside patent counsel.

Mr. Isseks: The witness has testified that at one time Mr. Dorsey was a director of Hartford; but it would be a date subsequent to this.

(The Court reads document.)

The Court: I think I will overrule the objection. The document is not a matter involving legal advice of counsel to his client; but more of a review and recitation of a meeting that was held.

Mr. Middleton: May we, Your Honor, on behalf of Owens, note our special objection to this document, on the ground, among others, that all said relating to Owens is hearsay: Mr. Dorsey's statement to Mr. Falck as to what Mr. Ashcraft said, or as to what others of Owens said.

The Court: Yes, you may have your objection on that ground. The document is admitted for other purposes.

Thereupon, Government's Exhibit No. 679 was read to the Court by Mr. Kramer, of counsel for the government.

Q. Mr. Falck, did you receive that letter, do you remember?

A. I don't remember it.

Q. But you do not question it?

A. I do not, no.

Q. You were advised, were you not, by Mr. F. Goodwin Smith from time to time as to the progress of the negotia-
[fol. 3207] tions between Hartford and Owens?

A. I was advised once in a while.

Q. There has been some testimony here, I believe, by Mr. F. Goodwin Smith, on examination of his counsel, that although the contract between your two companies, on the one hand Corning and Empire Machine, and Hartford on the other hand, was signed in October, 1922, the deal in fact was agreed to some time prior thereto?

A. That is correct.

Q. So that you really had some kind of arrangement between the two respective companies some time prior to October 5, 1922?

A. The executives considered the agreement made.

Q. You were consulted from time to time with regard to any agreement between Hartford-Fairmont and Owens?

A. I was consulted very rarely.

Q. Your recollection is that it was rare?

A. Yes, sir.

Q. That you were consulted?

A. Yes, sir.

Q. About the final deal?

A. Yes, sir.

Q. Do you remember at one time you were told by Mr. F. Goodwin Smith that Owens said the deal would have to be put through, otherwise they would license people in the so-called Corning field under their so-called gob feed patents?

A. I don't remember being told by Mr. Smith. I remem-
[fol. 3208] ber during the trial of the case that I have seen an exhibit in which some veiled threat was made.

Mr. Isseks: At this time, Your Honor, I should like to offer Government's Exhibit No. 680, a letter dated June 2, 1922, on the stationery of the Corning Glass Works, addressed to Mr. Smith, signed by the witness.

Q. I will ask you whether that is your signature at the bottom?

A. It is not.

Q. It is not?

A. No, sir.

Q. Did your secretary write it?

A. No. I don't know who wrote it.

Q. Look at the letter and see if you wrote the letter.

A. Somebody must have signed the copy. That is not my signature.

Q. It is a photostat of an original letter. It is signed: "Alexander D. Falck", is it not?

A. That is what it reads, but it is not my signature.

Q. Those are your initials in the lower left hand corner, are they not?

A. Yes. I see my stenographer's initial at that date in Corning; and I presume she signed it.

Q. There is no question about your dictating the letter?

A. Let me read it.

(The witness reads letter.)

[fol. 3209] A. Very well; no.

Mr. Isseks: It has been stipulated as to genuineness by Hartford-Empire.

The Witness: I think I recognize that handwriting as that of my secretary.

Q. You dictated the letter?

A. Yes, sir.

Mr. Isseks: I offer it in evidence.

The Court: It may be admitted.

* * * * * * * *

Q. I show you Government's Exhibit No. 680, a letter you wrote, at least dictated; and I show you Government's Ex-
[fol. 3210] hibit No. 41, which is a photostat of an original letter dated May 26th, 1922, addressed to Herbert Knox Smith; signed by J. C. Blair, vice-president and general

manager, on the stationery of the Owens Bottle Company; on which there is a notation in handwriting: "Copy to Mr. Dorsey, Mr. Falck, Mr. Arkell, and Monongah"; and ask you whether the letter referred to in Government's Exhibit No. 680 is not Government's Exhibit No. 41?

A. I think it is.

Q. Reference to a mysterious plan which you make in your letter of June 2, 1922, is a paragraph on the second page of Government's Exhibit No. 41, beginning, is it not:

"In regard to the segregation of the non-container field, on account of certain applications for association with us in the fields of the Corning Glass Company, this phase of our negotiations takes on even greater importance than existed a month or two ago. We are also of the opinion that if it is intended that the Corning Company would have the exclusive rights in this field, it presents problems which I feel necessitate the prompt solution of our negotiations.

"We are familiar with the position of the applicants in this matter, and it is quite clear to us they will act more or less promptly, either by securing the rights from us or seeking those rights from other plug feeders.

[fol. 3211] "We mention this on account of the great stress you put on this Corning situation, and it would be unfortunate, of course, if delay were to cause our company to feel the necessity of making an arrangement which might quite seriously embarrass our negotiations."

It is those three paragraphs, is it not, that you call the "mysterious plan"?

Q. Yes, sir.

Q. You say in your letter, Government's Exhibit No. 680, to Mr. F. Goodwin Smith:

"As to 3, they are about as indefinite as they could be, and will have to become more definite before there is any basis for discussion."

Did they become more definite, do you recall?

A. Never.

Q. Never did?

A. No, sir.

Q. It was just as mysterious at the end as it was at the beginning?

A. Exactly.

Mr. Isseks: At this time, Your Honor, I offer Government's Exhibit 681, a letter dated September 16, 1922, addressed to the witness, marked "Personal"; signed by Mr. V. M. Dorsey; stipulated as to genuineness by Corning, as Item No. 204.

[fol. 3212] Mr. Sayles: Objection to that as privileged, if Your Honor please.

* * * * * * * *

The Court: I will overrule the objection. It may be admitted.

Thereupon, Government's Exhibit No. 631 was read to the Court by Mr. Kramer, of counsel for the government.

Q. Mr. Falck, did you receive that letter?

A. If it is admitted—I have no recollection of it.

Mr. Isseks: It is stipulated as genuine by the Corning Glass Works.

Q. Mr. Falck, I show you Government's Exhibit No. 64, which purports to be a letter dated October 6, 1922, addressed to you, signed by Mr. F. Goodwin Smith, and stipu-

[fol. 3213] lated to genuineness, at least, by Corning. It bears a certificate from Corning. I direct your attention to the third paragraph.

The Court: Is that No. 64?

Mr. Isseks: Yes, Your Honor.

Q. —where it says, third paragraph:

"Mr. Dorsey also felt that before long it would be advisable to have an uninspired news item appear in the trade papers relative to our strengthened position with the control of the Howard patents, that such news item would in itself serve as a warning to glass manufacturers not to continue to put in Miller feeders."

Do you remember whether that news item was ever published?

A. I have no recollection.

Q. You have no recollection at all?

A. No, sir.

Q. You do recall that the Owens deal went through, do you not, and the contract was signed April 9, 1924?

A. Yes, sir.

Q. You approved that as a director of Hartford?

A. I presume I assented to it.

Q. You would remember it if you voiced any objection to it?

A. I remember I objected continuously to the making of the contract.

Q. Before it was made?

A. Yes.

Q. Why did you object to making the contract?

[fol. 3214] A. None of those —there were certain provisions I objected to throughout. I don't know whether they were in the final contract or not.

Q. What were they?

A. A provision for increasing royalties to be shared by Hartford and Owens. I objected to that.

Q. You mean the final arrangement?

A. I don't know what was in the final contract. I have not reviewed it.

Q. What else did you object to?

A. The first negotiations were on the question of Hartford selling out. I took no position; had nothing to say about that. Later it was proposed to increase the royalty rates to be shared. I remember I objected to that throughout.

Q. There was a final contract made?

A. Yes, sir.

Q. Did you object to that contract?

A. I do not suppose I did.

Q. Did you object to the participation by Owens in a certain share of the income of Hartford?

A. I suppose I agreed that the contract should be made.

Q. Did you object to Section No. 22, the so-called veto provision?

A. I don't know whether I knew that Section 22 was there.

Q. You would not say you did not know it?

A. I would be quite apt; I did not know the detail of the contract at any time.

Q. You did know that Owens had some kind of veto power?

[fol. 3215] A. No, sir.

Q. You knew that Mr. Michael Owens insisted upon it?

A. No, I never sat in on those discussions.

Q. The final contract, you approved?
A. I was a director; I suppose I did.
Q. Do you have any recollection of it, sir?
A. No, none whatever.
Q. Do you remember after the final contract was made between Owens and Hartford, there was some question of acquiring the Miller properties, and the Tucker, Reeves & Beatty applications?
A. Yes, I remember those questions were up at some date.
Q. Did you participate in the negotiations on behalf of Hartford?
A. No, I don't think I did.
Q. Did you participate in the consideration by Hartford as to whether they should go ahead with these purchases or acquisitions?
A. I suppose, as director, they were discussed with me to some extent.
Q. Do you not remember asking about the propriety of the Tucker, Reeves and Beatty matter, in the light of the Federal Anti-Trust Laws?
A. I remember that on all those so-called pirate cases, I had discussions from time to time with Mr. Dorsey and with the Smiths.
Q. Specifically, my question is do you remember consid-
[fol. 3216] ering the matter in the light of the Federal Anti-Trust Laws?
A. No, sir.
Q. You do not remember it at all?
A. No, sir.

Mr. Isseks: Your Honor, at this time I offer as Government's Exhibit No. 682, a memorandum dated July 1, 1925, which has on the top of it: "By Mr. Falck"; and at the end it says: "Mr. A. D. Falck"; stipulated as coming from the files of Hartford-Empire Company, at page 5 of the Stipulation.

Q. I show you this document, Mr. Falck, and ask you, first of all, whether you recognize the handwriting at the top and at the end?
A. No, I don't recall either one.
Q. Will you be kind enough to read it?
A. I do recognize some handwriting in the body.

Q. Whose handwriting is that?

A. That is my handwriting.

Q. At the bottom of the second page are the words: "We would be safe if the business goes well"; and at the end there you say that is your handwriting?

A. Yes, sir.

Q. Look at the document, will you please, sir, and tell us whether you wrote it?

A. I cannot tell you from recollection; but as I made the notation in ink in the body of it, I presume I did.

Q. Does the reading there indicate your dictation?

A. No, sir.

[fol. 3217] Q. It is too long ago to remember?

A. Yes, that was a long time ago. There were lots of papers.

Q. You do not question it though?

A. No, I do not question it. I think I probably wrote it.

Mr. Isseks: I offer it in evidence, Your Honor.

The Court: It may be admitted.

Thereupon, Government's Exhibit No. 682 was read to the Court by Mr. Kramer, of counsel for the government.

Q. Now, Mr. Falck, I show you Government's Exhibit No. 78, which is a letter dated August 27, 1925, addressed by you to Mr. F. Goodwin Smith. It is signed by you, is it not?

A. Yes, it is.

Q. I direct your attention to the fact that you say in this letter:

"I have your letter of the 24th, with memorandum concerning the purchase of the Federal interests. I do not yet fully comprehend what this may mean to Corning. I am, however, satisfied that it was wise from the standpoint of Hartford-Empire to make the purchase unless there are more or less concealed liabilities of which I am not aware. The memorandum by Carter seems to me to summarize the convincing points. I fear that I am more inclined to the less optimistic position of Williams on the Federal law question than to the position which Herbert [fol. 3218] takes, but I am free to confess that as a lawyer, I ought not to express, or entertain any opinion on this subject without a thorough study of it."

Were you familiar with the view taken by Mr. Lloyd T. Williams with regard to the Federal question?

A. Evidently I was, at that time.

Q. Was not the opinion of Mr. Williams set forth in the memorandum, Government's Exhibit No. 74, which you saw, by Mr. F. Goodwin Smith; and in which Mr. F. Goodwin Smith said that Mr. Herbert Knox Smith said he approved of the matter from the Anti-Trust standpoint; but as Mr. Williams has stated on page 7 of the memorandum:

"Mr. Williams is in favor of making the purchase on the basis of its advantages as against its disadvantages and the disadvantages that exist or arise from not making it. He, however, is not so confident that we are entirely safe from attack under the Anti-Trust Laws as Mr. Knox Smith is."

You were familiar with that opinion, were you not?

A. Yes, I must have been.

Q. You finally approved the deal, did you not, sir, as it went through?

A. Yes, sir.

Q. Did I understand you correctly when you said before that you were unfamiliar with Section 22 of the April 9, [fol. 3219] 1924, contract?

A. I have heard of Section 22 referred to so often in recent years. I don't know when I was first familiar with it. But I did not sit in on the drafting of any of those contracts; nor on the detailed discussion; and I think I was present only at one meeting, in which the general terms of the Owens-Hartford contract were discussed.

Q. Shortly after the contract was made, you became aware, did you not, almost immediately of the effects of Section 22, when your company tried to acquire rights from Hartford in certain fields of glassware?

A. I don't know to what attempt of our company you are referring to.

Mr. Isseks: Perhaps I can refresh your recollection, sir.

I now offer in evidence a letter dated May 31, 1924, a little over a month after the contract was executed, addressed to Mr. F. Goodwin Smith, by the witness; and stipulated as to genuineness by Corning, Item 263. The exhibit is No. 683. I offer it in evidence, Your Honor.

The Court: It may be admitted.

Mr. Isseks: Your Honor, I should like to have marked as Government's Exhibit No. 684 the letter to which No. 683 is a reply. I got the wrong document for a minute. This letter is dated May 27, 1924, from Mr. Goodwin Smith to the witness; stipulated as to genuineness by Corning, Item [fol. 3220] No. 261.

If Your Honor admits No. 684, I should like to have that read first, so that the sequence becomes clear.

The Court: It may be admitted.

Thereupon, Government's Exhibit No. 684 was read to the Court by Mr. Kramer, of counsel for the government.

Thereupon, Government's Exhibit No. 683 was read to the Court by Mr. Kramer, of counsel for the government.

Q. Mr. Falck, you wrote Government's Exhibit No. 683, did you not?

A. I think so.

Q. That refreshes your recollection, does it not, that you were familiar, almost from the inception, with the veto power that Owens had, to the extent that it had it?

A. I presume I was.

Mr. Isseks: Your Honor, at this time, I should like to offer Mr. F. Goodwin Smith's reply to Government's Exhibit No. 683, which is a letter of June 6th, 1924, addressed to the witness; signed by Mr. F. Goodwin Smith, vice-president; stipulated as to genuineness by Corning, Item No. 264.

There is attached to it, as I understand it, a letter as Government's Exhibit No. 686, from Mr. F. Goodwin Smith to Mr. Baker, treasurer, Owens Bottle Company, which bears no date. That, too, is stipulated as genuine by [fol. 3221] Corning Glass Works. It has indicated on the top of it, "Copy for Mr. Falck."

I offer both Government's Exhibit Nos. 685 and 686 in evidence.

The Court: Was 686 enclosed with 685?

Mr. Isseks: That is what we understand, Your Honor. It is an undated document. There is a reference at the bottom of the page, in the next to the last paragraph of No. 685, Your Honor, to an enclosure. I believe that is it.

The Court: I see.

Mr. Isseks: Does counsel raise any question as to whether No. 686 is the enclosure?

Mr. Sayles: No. I think it is.

Mr. Isseks: Mr. Sayles says he thinks it is.

The Court: Very well; it will be admitted.

Thereupon, Government's Exhibit No. 685 was read to the Court by Mr. Kramer, of counsel for the government.

Thereupon, Government's Exhibit No. 686 was read to the Court by Mr. Kramer, of counsel for the government.

Q. What is the difference between Lime Glass and Pyrex?

A. I am not a chemist. I could not tell you in technical terms.

Q. The business understanding?

A. The glass you designate by "Pyrex" is a low expansion glass, as compared with Lime glass; and it has in its composition certain factors not in Lime glass, particularly [fol. 3222] boric acid.

Q. Lime glass is the regular run of glass?

A. Yes, sir.

Q. Pyrex glass is a special composition glass patented by your company?

A. Pyrex is a trademark; but there are, as you have sometimes spoken of them, heat resisting glasses, low expansion glasses. It is a special composition which makes a hard, strong glass.

Q. There were patents taken out on that particular type?

A. On that range of composition.

Q. On that sort of glass?

A. Yes, sir.

Mr. Isseks: If Your Honor please, I offer Government's Exhibit No. 687, a letter dated December 24, 1925, addressed to Mr. V. M. Dorsey; signed by the witness; and stipulated as to genuineness by Corning, Item No. 313. The next to the last paragraph of this letter shows that a copy of the letter was being sent to Mr. F. Goodwin Smith.

I offer Government's Exhibit No. 688, a letter dated December 28th, 1925, addressed to the witness, and signed by F. Goodwin Smith; referring to the same subject matter. This is stipulated as to genuineness, Item 314.

I offer both documents in evidence.

Government's Exhibit No. 688 shows that Mr. Smith is replying to the letter which he received from the witness, which is Government's Exhibit No. 687; the first line shows [fols. 3223-3225] that.

The Court: They may be admitted.

* * * * * * *

[fol. 3226] Q. Mr. Falck, in connection with the heat-resisting field where you had certain composition patents, did you issue any license to any other manufacturers of glassware in this country?

A. Yes, we did.

Q. Who was it?

A. We issued, in about 1920 or about that year, a license to the H. C. Fry Glass Company, and a license to the McKee Glass Company. Those were the only licenses issued at that time.

Q. Now, you gave them a license on your composition patents?

A. With limitations, yes.

[fol. 3227] Q. For a limited field?

A. Yes.

Q. Did you also permit them to use the Hartford feeders in connection with the composition patents?

A. No, I don't think we were asked to.

Q. I believe there are some documents here showing, in the case of McKee, they asked for the right to use the Hartford feeder but were not given that right because you had an exclusive right in that particular field?

A. Not in 1920.

Q. At some later date they made the application?

A. They may have.

Q. You have no recollection?

A. No.

Q. Anybody else besides those two,—McKee and Fry,—that your Company gave a license to use the composition patents?

A. I cannot answer that accurately, but I am of the impression that since I retired from the presidency there have been some rights given; but Mr. Curtiss or Mr. Amory Houghton would know about it.

Q. The patents expired in 1936?

A. Yes. But I mean between that and 1928.

Q. Mr. Houghton would know?

A. Yes.

Q. Now, under your 1922 agreement you had certain exclusive fields, did you not, as to Hartford machine patents?

A. Yes.

Q. Do you remember that one of your fields was the field [fol. 3228] of tubing and cane?

A. Yes.

Q. Do you remember that where Hartford had a patent on tubing and cane you would have the exclusive right in the tubing and cane field but Hartford, on the other hand, would have the right in the container field?

Mr. Sayles: If Your Honor please, I object to this line of testimony, on the ground it is not in the pleading. Tubing isn't mentioned in the complaint in any way.

Mr. Isseks: My recollection is that it is. It is one of the divisions of fields we talk about in the complaint.

The Court: Do you know the page?

Mr. Isseks: Paragraph 44 of the complaint. We allege that under the agreement of October 6, 1922, "Hartford granted Corning an exclusive license to manufacture pressed and blown glassware under any and all patents then owned or to be acquired in the future by Hartford. The pressed and blown field specified in the June 30, 1916, agreement, referred to in Paragraph 41 hereof, was extended and more fully defined." And the contract itself specifies tubing and cane as one of the pressed and blown glassware fields.

Mr. Sayles: If Your Honor please, Paragraph 29 on page 13 of the complaint defines pressed and blown glassware.

Mr. Isseks: In the contract, which is Government's Exhibit 16,—Government's Exhibit 19, rather, but I am reading from 16—ware division "g" it provides that it shall consist of drawn tubing and cane. Right in the contract. [fol. 3229] We refer to the contract in the complaint. Certainly the government isn't required to specify word for word every item in the contract.

The Court: Paragraph 44 is pressed and blown glassware.

Mr. Isseks: And in ware division "g" of the contract it states that it consists of drawn tubing and cane.

Mr. Sayles: It is neither pressed nor blown.

The Court: What is the purpose of the counsel's inquiry as to this particular item?

Mr. Isseks: Your Honor will recall when Mr. F. Goodwin Smith was testifying we went through the same line of inquiry, as I recall it no objection made by counsel for Corning, and the purpose is to show Hartford had finally developed a Peiler-Punty patent, and that patent could be used, so Mr. Goodwin Smith testified, in the field of tubing

and cane. It is the government's position, insofar as it could have been used in the general container field, the licensees of Hartford had certain rights thereunder. What finally happened was that Corning and Hartford made an agreement by which, I believe there is testimony in the record, Corning paid $350,000 for an exclusive right in connection with this Peiler-Punty Patent in the tubing and cane field, Hartford reserving all other rights it had in the container field. Your Honor was shown an exhibit, offered by counsel for Hartford when they examined Mr. Smith, [fol. 3230] that that particular patent was transferred completely to Corning under the September 23, 1940, contract.

The Court: I remember, Mr. Sayles, that that question was gone into, unobjected to, through Mr. Goodwin Smith.

Mr. Sayles: Well, if Your Honor pleases, very likely I slept on that, but here the complaint alleges there were certain alleged conspiracies in certain lines, and according to the complaint this tubing isn't any more in it than flat glass or laminated glass, or any of those.

The Court: I think so far as the government's intention and effort to show a specific license under a general machine that might make containers, and an exclusion of all others, might be in line with their complaint. For that purpose it might be gone into.

Mr. Sayles: If I may answer, the proof that is in the case, probably through my neglect, shows it wasn't good for containers, just for tubing.

The Court: I think I will permit him to inquire into it for that purpose.

(Previous question read.)

A. Well, if I may say so, Mr. Isseks, you don't have patents on tubing and cane. You have patents——

Q. On a machine?

A. You cannot use those patents to manufacture tubing and cane——

Q. Go ahead.

A. —you can use devices embodying those patents to [fol. 3231] manufacture tubing and cane, I imagine those are the patents you refer to.

Q. Yes, that is right. If Hartford had a machine, or patent on a machine, that could be used for tubing and cane, your company, under the 1922 contract, had exclu-

sive rights thereunder on the payment of royalties; isn't that so?

A. Yes.

Q. And Hartford, on the other hand, could use the same patent, or, rather, the machine on which the patent was issued, for the general container field, under the 1922 contract?

A. No, Hartford had no machines for drawing tubing and cane; it had a patent.

Q. That is what I understand.

A. But no machine.

Q. It just had the patent?

A. Yes.

Q. But no machine?

A. No.

Q. Of course it could have had a machine built for it?

A. No.

Q. If it had a patent, couldn't it have the machine built?

A. Not unless someone could devise a machine that would be complete to produce the glassware desired. You can have a patent on an idea but that doesn't give you a completed machine.

Q. You mean by that they had a patent which con-
[fol. 3232] ceivably might be used in connection with containers, but no machine had been developed, no device?

A. In connection to tubing, we are referring to, not containers.

Q. You mean even as to the tubing and cane field they didn't have a machine?

A. Exactly what I mean. They had no machine.

Q. They didn't have a machine for anything?

A. No.

Q. All they had was a naked patent?

A. They had a feature, that was not a complete machine, that operated in accordance with the patent.

Q. You are talking about a specific patent called the Peiler patent?

A. Yes.

Q. I wasn't. I was talking about general rights. I am talking about the situation under your 1922 contract; where Hartford would get a patent, your rights under that were exclusive in the tubing and cane field; isn't that right?

A. Yes.

Q. And certain other fields; isn't that right?

A. Yes.

Q. You were supposed to pay royalties, as specified in the contract, in the tubing and cane field?

A. If we used their invention.

Q. And if the patent were applicable to the general container field, Hartford had the right to license it, did they not?

[fol. 3233] A. Yes.

Q. Do you remember a time came when you learned, as executive head of Corning, that Hartford had issued to its inventor and chief engineer, Karl Peiler, a so-called Peiler-Punty Patent?

A. Yes.

Q. What position did your company take in connection with that particular patent, do you recall?

A. Yes.

Q. Will you tell us, please?

A. There is a provision in the contract that we should be notified of the issuance of patents, and that we might disaffirm any acknowledgment of a patent after receiving that notice. In that event we would have no license under it. If we did not disaffirm it, we would have a license, and we would be liable for whatever royalties were required in the event of its use. We had the option to accept all patents that they obtained, or not.

Q. In your field?

A. Yes.

Q. And you are directing your attention now to the Peiler-Punty Patent?

A. Well, I am speaking, that is general.

Q. My question was what happened in connection with the Peiler-Punty Patent?

A. In connection with that, Corning Glass Works would, in that particular case, have paid royalties, if it used Hartford's inventions, for the production of tubing and the [fol. 3234] production of cane; and the production of tubing and cane was such that those royalties would have amounted, over a period of years, to a very large sum.

Q. Approximately how much?

A. Well, on the then-production—there is a factor that I must assume, that is the rate of royalties, because that was not specified in dollars and cents, it was stated a normal royalty should be paid. Corning at that time was pay-

ing for the use of a tube drawing machine, 2 cents a pound.

Q. The Danner machine?

A. Danner. So that using that same rate, assuming that that rate was paid Hartford, it would have been several million dollars in the course of the life of the patent.

Q. In reference to this Danner machine, your company was using the Danner machine, was it not, in making tubing and cane?

A. We were in drawing tubing.

Q. Did your company have the right under the Danner machine?

A. We had a right for electrical purposes.

Q. It is a fair statement to say your company, in 1926, was the largest manufacturer of tubing and cane, commercially, in this country?

A. No, I don't think that is correct, Mr. Isseks. For electrical purposes, I think the General Electric Company drew more tubing and cane than the Corning Glass Company.

Q. But they didn't sell it commercially; that is what I meant. They make it for themselves?

[fol. 3235] A. Yes.

Q. I mean commercially, for sale to other people?

A. For non-electrical purposes, for lime glass tubing, the Kimble Glass Company was the largest.

Q. But for electrical purposes your company was, having in mind the General Electric does not sell to the public?

A. Right.

Q. As a matter of fact no one else in the country makes tubing and cane, so far as you know, commercially?

A. For lamps?

Q. For electrical purposes?

A. No.

Q. You do make tubing and cane for non-electrical purposes, do you not?

A. Yes.

Q. And in addition to that it is manufactured by Kimble?

A. Yes.

Q. Did your company take the position that any payment of royalties which would come to the amount of money you indicated, should not be paid by your company under the contract, under the Peiler-Punty patent?

A. No, we took the position that if we could obtain the right for a cash sum, smaller cash sum, we would like to do so.

Q. How much money do you say it might come to?

A. I have forgotten now.

Q. Taking 2 cents a pound?

A. At 2 cents a pound, we were making at that time about [fol. 3236] 4,000,000 pounds per annum, so that would be about $1,300,000, I think, for the period of the contract on our production, without allowance for increases. Of course we are making many times that today, and the patent has not yet expired.

Q. Of course, these other companies, General Electric and Kimble, would also have to pay royalties?

A. The figures I gave were only for the Corning Glass Works.

Q. General Electric was greater than yours?

A. About 50% greater.

Q. Taking your figure, then, theirs would be about $1,950,000?

A. Yes.

Q. Kimble was making non-electrical tubing?

A. Yes. There was another company in the business called the Libbey.

Q. In Toledo?

A. Yes.

Q. Is that a subsidiary of Owens, or a different company?

A. I don't know what the status is today. It is the old Libbey Glass Mfg. Company, whatever form it has today I don't know.

Q. They were manufacturing drawn tubing, were they not, for non-electrical purposes?

A. That is correct.

Q. They were all using the Danner machine at that time, were they not?

A. Yes.

Q. And this Peiler-Punty patent read on the Danner machine, and of course the patent continued in effect 'way [fol. 3237] beyond the Danner machine in time, did it not?

A. Yes.

Q. How much did you finally pay for an exclusive right without the payment of royalties?

A. $350,000 or $375,000, I have forgotten which.

Q. I believe the contract says $350,000.

A. $350,000.

Q. That was contributed how, by the various people using the machine for manufacturing drawn tubing?

A. It was contributed to by all those you have named using the Danner machine.

Q. General Electric, Corning, Kimble?

A. And Libbey.

Q. For $350,000 these companies got rights which, if paid under the normal rate, might run into—if it is a fair statement—$10,000,000?

A. I wouldn't know without figuring up.

Q. It would be a large sum?

A. Several million dollars, yes.

Q. You gentlemen must have been very good business men. How did you get the Hartford people to give up for $350,000 something which, on the face of it, might run into many millions of dollars?

A. I, perhaps, didn't go into sufficient detail in talking about the royalties. The four manufacturers that have been mentioned were paying royalties,—at least three were, the General Electric, Kimble Company and the Corning Company. The Libbey Company, having been the original [fol. 3238] owner of the Danner machine, I don't know whether it was paying to itself or to an associate company or not. The Hartford people recognized that they had no tube drawing device. They had obtained a patent which had been obtained on an early application filed before the Danner application, and that patent read on the Danner machine, but they recognized that the actual device that had been worked out and was being used, was not their work, and that they had no substitute device to offer, and that it was inequitable for them to ask as much royalty for the use of their patent as was being paid, as high a rate as was being paid for the use of the Danner patent, and a very efficient device. So they were willing to say, "We could take a fraction of what the 2 cents might be normally". I should have said that when I was talking about what the royalties would have amounted to. And there was a long discussion, the users were trying to get the best deal they could and Hartford was trying to get the best, and they discounted it various ways, discounted it for cash, discounted it because it wasn't an adjudicated patent, and finally came down to that figure as a matter of negotiation.

Q. You said Hartford recognized it was not their work—I think that is what you said—those were your words?

A. If I did I mis-spoke. I said Hartford recognized they had not a physical device for us to use; they had only a patent.

Q. You are not suggesting it was something Hartford misappropriated?

[fol. 3239] A. I don't know I used those words. If I did I corrected it. The thing that Hartford recognized was that they had no physical tube drawing mechanism.

Q. The Danner patent expired in 1934, isn't that so?

A. Yes.

Q. And the Peiler-Punty goes to 1943?

A. That is right.

Q. So that the people that acquired these exclusive rights for tubing and cane, extended the life of the Danner patent to 1943 by the payment of this lump sum of money?

Mr. Sayles: I object to that as calling for a conclusion.

The Court: Overruled. He may answer, if he knows.

A. No, they didn't extend the life of the Danner patent at all. They acquired rights under a new patent which ran to 1943.

Q. But they extended the life of the machine which was covered by the Danner patent to 1943?

A. Well, they extended their rights to the use of any machine covered by that Peiler patent.

Q. Did they pay royalties to Danner?

A. Until the expiration of the Danner patent.

Q. In 1934?

A. Yes.

Q. After that they paid royalties to no one?

A. No, they bought the rights from Hartford.

Q. But no one else could use it?

[fol. 3240] A. No.

Q. Without paying the royalty?

A. No one else could use it. Hartford had disposed of the rights to this group of users.

Mr. Isseks: Now, at this time I would like to offer some documents in connection with this matter. The first one is a letter dated January 25, 1926, addressed to Corning Glass Works, attention Mr. A. D. Falck, signed, apparently, by

Mr. Dorsey, stipulated as to genuineness by Corning, item 317.

Mr. Sayles: I would like to object to this letter, if Your Honor please, on the ground it is not pleaded in the complaint.

The Court: You may have your objection. I expect this refers to the tubing?

Mr. Isseks: Yes. This very matter we talked about.

The Court: It may be admitted.

(Government's Exhibit 689 read by Mr. Kramer.)

Mr. Isseks: Your Honor, I forgot to offer some documents on the heat-resisting ware. They are in Your Honor's book. I skipped them inadvertently. I would like to offer them right now.

One dated June 7, 1926, I offer it as Government's Exhibit 690, addressed to one P. W. McAbee, president, Hemingray Glass Company, apparently signed by the witness, and stipulated as to genuineness by Corning Glass Works, item 346. I offer it in evidence.

[fol. 3241] 691, letter dated July 22, 1926, addressed to Mr. Phillip McAbee, the same gentleman, signed, admittedly, by W. H. Curtiss, assistant to the president, stipulated as to genuineness by Corning Glass Works, item 360.

The Court: They may be admitted.

(Government's Exhibits 690 and 691 read by Mr. Kramer.)

Q. You heard those letters read, did you not?

A. I did.

Q. Was Hemingray ever given a license on your Pyrex patents, so-called, composition patents?

A. So far as I know nothing transpired after those letters.

Mr. Isseks: At this time I would like to offer in evidence Government's Exhibit 692, reply to Government's Exhibit 689, the reply which is dated January 27, 1926, written by the witness to Mr. Dorsey.

(Government's Exhibit 692 read by Mr. Kramer.)

Q. You wrote that, did you not, Mr. Falck?

A. I did.

Mr. Isseks: Your Honor, at this time I would like to offer in evidence two documents relating to this letter of the Peiler-Punty patent, one as Government's Exhibit 693, a letter dated April 24, 1926, written by the witness, addressed to F. Goodwin Smith and Vernon M. Dorsey; with document attached to it, as I understand it, a memorandum, to which reference is made in Government's Exhibit 693, and I offer the memorandum, which is rather lengthy—seven pages—as Government's Exhibit 694; it is dated April 22, 1926, [fol. 3242] and the first document, the letter, has been stipulated as to genuineness by Corning, and the second one stipulated as coming from the files of Hartford-Empire, at page 6 of the stipulation.

Mr. Sayles: If it please the Court, the schedule, in addition to the objection that it is not within the pleading, I wish to make the objection that the three pages and a third of the third page, A2, have nothing to do with this lawsuit, are not within the pleadings, are not relevant in any way. They analyze Corning's patent situation, you might say, in ways other than involved in this lawsuit.

The Court: That is paragraph "A" on page 3, which relates to cane?

Mr. Sayles: I mean the first page and the second page and down to A2 on the third page.

Mr. Isseks: You want that out?

Mr. Sayles: Yes.

Mr. Isseks: Well, my associate tells me we can readily agree not to offer that part of it. I will offer only the part beginning with "B" on page 3, until the end.

The Court: Very well.

Mr. Isseks: At this time. If the government decides the other matter relates to it, we will take it up at an appropriate time.

Mr. Middleton: May I, Your Honor, on behalf of Owens, voice our objection to all of the testimony with respect to tubing and cane, and machinery for production thereof, on [fol. 3243] the ground I might say I am making the objection because reference is made to Libbey, which is now a part of Owens-Illinois Glass Company, one of the defendants, and I call attention of the Court to the definition, which I believe will control in this case, found in paragraph 29 of the complaint, and which must eliminate any issue with respect to tubing and cane.

Mr. Williams: I think there was a mistake made with reference to the Libbey Glass Company, and if it is cleared up now there will be less confusion in the future. I think the statement was made that Corning got rights under the Danner machine patent from Libbey Glass, and it later became a subsidiary of Owens. The Libbey Glass Company, of which the witness speaks, from which Corning took rights, was dissolved in 1918 and its function taken over by the Libbey Glass Company Trust and the Libbey Glass Manufacturing Company; and the Libbey Glass Company, which is now a subsidiary of Owens, was not organized until in 1936, when it took over some of the assets of the Libbey Glass Manufacturing Company. So there is no connection between Owens and the Libbey Glass Company Mr. Falck was speaking of.

Mr. Isseks: We make no claim on that whatsoever.

The Court: I will admit Government's Exhibit 693, and 694 beginning on page 3, paragraph "B".

Q. I would like to ask the witness if he can identify the handwriting on the bottom of each of the pages of Government's Exhibits 694. Does it look familiar to you?

[fol. 3244] (No audible response.)

Mr. Isseks: The witness says he doesn't know, in answer to the question. I asked him to identify the handwriting on the bottom on the right-hand corner of each page where there are some initials, and he says he doesn't recognize them.

(Government's Exhibit 693 read.)

[fol. 3245] Q. Mr. Falck, you wrote Government's Exhibits Nos. 693 and 694, did you not?

A. I believe I did.

Mr. Isseks: At this time, Your Honor, I should like to offer Government's Exhibit No. 695, a memorandum dated June 25, 1926, headed "Peiler Patent—Danner Machine" to Messrs. Burrows, Frech & Cross, from Mr. Falck, stipulated as coming from the files of Hartford, at page 6.

Counsel for Corning have asked us to attach to the original exhibit one page of calculations showing the amount of royalties that might be payable, and reductions thereof normally. I have attached that to the original exhibit.

The Court: Who has made that request?

Mr. Isseks: Counsel for Corning. Here is a copy for Your Honor. Government counsel is willing to accept the word of counsel for Corning; and we will verify it by the witness.

Q. I ask you whether there was attached to it a computation of royalties as counsel states?

A. Yes, there was.

Mr. Isseks: I offer the document with the attached computation as one exhibit.

The Court: It may be admitted.

Thereupon, Government's Exhibit No. 695 was read to the Court by Mr. Kramer, of counsel for the government.

[fol. 3246] Q. Mr. Falck, you wrote that, did you not?

A. I think so, yes.

Q. You sent a copy to Mr. Smith, too? We found a copy in the files of Hartford.

A. Undoubtedly.

Q. There is a notation, "F. G. S." at the bottom of each page. Does that refresh your recollection?

A. No, I cannot say it does; but undoubtedly I did.

Mr. Isseks: At this time, Your Honor, I offer Government's Exhibit 696, a memorandum addressed to Dr. Sullivan and Mr. Amory Houghton, by the witness, dated November 22, 1926. It is not stipulated. Is there any question about this, Mr. Sayles?

Mr. Sayles: No, I don't think so.

Mr. Isseks: No question about it?

Mr. Sayles: No.

Mr. Isseks: I offer it in evidence.

The Court: It may be admitted.

Mr. Isseks: Before it is read I should like to ask the witness some questions about 695.

Q. These gentlemen, Messrs. Burrows, Frech & Cross, are General Electric representatives?

A. They were, yes, sir.

Q. Dr. Sullivan was one of your directors in 1926?

A. Yes, sir.

Mr. Isseks: Now, Your Honor, I should like to have Government's Exhibit No. 696 read.

[fol. 3247] Thereupon, Government's Exhibit No. 696 was read to the Court by Mr. Kramer, of counsel for the government.

(Afternoon recess.)

The Court: Proceed.

Q. Mr. Falck, did you write Government's Exhibit No. 696?

A. Yes, I did.

Mr. Isseks: At this time, Your Honor, I offer as Government's Exhibit No. 697 a letter addressed to the witness; signed by F. Goodwin Smith, dated January 3, 1927. There is no stipulation on it, Your Honor; but the copy we have is certified as a true copy by the Corning Glass Works. Is there any question about it, Mr. Sayles?

Mr. Sayles: No.

Mr. Isseks: I offer it in evidence.

The Court: It may be admitted.

Thereupon, Government's Exhibit No. 697 was read to the Court by Mr. Kramer, of counsel for the government.

Mr. Isseks: Your Honor, Mr. Wall tells me there is no question that Mr. F. Goodwin Smith wrote it.

Mr. Wall: If we have any question later we will raise it. I do not think we will have.

The Court: Very well.

Mr. Isseks: At this time, Your Honor, I should like to offer Government's Exhibit No. 698, a letter dated January 10, 1927, addressed to the witness; signed by V. M. Dorsey. There is no stipulation on it; but it is certified a true copy by Corning. Is there any question about it, Mr. Sayles?

[fol. 3248] Mr. Sayles: No.

Mr. Isseks: Mr. Sayles says no. I offer it in evidence.

The Court: It may be admitted.

Thereupon, Government's Exhibit No. 698 was read to the Court by Mr. Kramer, of counsel for the government.

Q. Mr. Falck, do you remember receiving that letter?

A. No; but I think I must have.

Mr. Isseks: Your Honor, I should like to offer as Government's Exhibit No. 699, a letter dated March 2, 1937, written to Mr. Herbert Knox Smith by the witness; stipu-

lated as to genuineness by Corning, and also by Hartford, in their stipulation.

The Court: It may be admitted.

* * * * * * *

Q. Mr. Falck, you wrote the letter, did you not?

A. Yes, sir.

[fol. 3249] Q. There is a reference here to a Howard application designed to cover our No. 399 Machine. First of all, your No. 399 Machine was your original machine?

A. That is correct.

Q. The Howard application finally did turn into a patent, did it not?

A. It was ultimately patented.

Q. The so-called Howard Auto-blow Patent?

A. Yes, sir.

Q. After the patent issued, were there negotiations between Hartford and Corning with regard to that Howard Auto-blow Patent?

A. Yes, sir.

Q. You finally had an agreement, did you not?

A. Yes, sir.

Q. The agreement gave Corning exclusive rights in its certain fields?

A. Yes, for that particular type of machine; what we called our straight line ribbon machine.

Q. Hartford reserved to itself rights to other fields, as well as the general container field?

A. Yes; I have not seen the agreement in a long time, but I am sure that is so.

Q. That is one of the patents, was it not, assigned to Corning in 1940, outright?

A. Yes, it is.

Mr. Isseks: Your Honor, at this time I should like to [fol. 3250] offer in evidence the reply from Mr. Knox Smith to the witness, Government's Exhibit 699; the reply dated March 4, 1927, addressed to the witness, signed by Mr. Knox Smith; stipulated as to genuineness by Hartford-Empire, page 14 of the Stipulation.

I offer it as Government's Exhibit No. 700.

The Court: It may be admitted.

Thereupon, Government's Exhibit No. 700 was read to the Court by Mr. Apsey, of counsel for the government.

Mr. Isseks: Your Honor, at this time I offer, as Government's Exhibit No. 701, a memorandum by Herbert Knox Smith, dated December 10, 1927, "Regarding talk with Alexander D. Falck, December 7, 1927," stipulated as to genuineness by Hartford-Empire, at page 15 of the Stipulation.

The Court: It may be admitted.

Mr. Sayles: Your Honor, I think I will object to this—we have no copy in the file—and ask that it be limited. It is hearsay. I do not really know what it is about. I wish to make that objection.

Mr. Isseks: I should like to ask the witness to read it. I think it is admissible, based upon Your Honor's past ruling, to show purpose, state of mind, and intent of Hartford.

Q. I shall ask you to read it and ask you if it does not set forth conversations that you had with Mr. Herbert Knox Smith on or about the date mentioned?

[fol. 3251] A. I had a good many conversations with Mr. Smith back thirteen years. I had not any idea whether I had one at that date or on those subjects at that particular time; but I did discuss all of those subjects, at one time or another, with him.

Mr. Isseks: I offer it in evidence.

The Court: It may be admitted, for the purpose only, of showing the state of mind of Mr. Herbert Knox Smith, but not as to the truth of the quoted statements of the witness.

Mr. Isseks: That is all right, Your Honor.

Thereupon, Government's Exhibit No. 701 was read to the Court by Mr. Apsey, of counsel for the government.

Mr. Isseks: Your Honor, at this time, I should like to offer Government's Exhibit 702, a letter dated June 7th, 1928, written by the witness to Mr. Kimble. It is not stipulated, but there is a certificate on the copy that it is a true copy. I should like to ask Mr. Sayles if there is any question about it.

Mr. Sayles: No, I believe not. Of course all of these relating to Peiler-Punty are under our objection, as not being within the issues.

The Court: I understand that. It may be admitted.

Thereupon, Government's Exhibit No. 702 was read to the Court by Mr. Apsey, of counsel for the government.

[fol. 3252] Q. You wrote that letter, did you not, sir?

A. Yes, I did.

Mr. Isseks: I wish to point out, Your Honor, that the contract by which Hartford gave the rights to Corning is dated June 26th, 1928, and it is Government's Exhibit No. 379. The consideration recited is $350,000.

Q. Mr. Falck, do you remember that there was a discussion between Hartford and Corning with regard to the possible use of the ribbon machine for making bottles?

A. Oh yes, that has been discussed from time to time.

Q. Do you remember that the discussions started as early as 1928?

A. I think so.

Q. What was the outcome of those discussions?

A. None of the engineers found a way, or thought they could find a way, to modify that machine for the production of bottles.

Q. If the machine could be used for the production of bottles, Hartford had rights, did it not, in the container field?

A. Had the rights.

Q. Do you remember there were conversations, beginning as early as 1928, as to the possible use of the ribbon machine for making tumblers?

A. At some date, there were, yes, early there were conversations.

Q. What was the outcome of those conversations?

[fol. 3253] A. Corning made some tumblers on the machine.

Q. When did they start?

A. I cannot tell you, Mr. Isseks. I can have it checked up.

Q. Very early?

A. I really cannot say. It was in the twenties, I think.

Q. Have they continued to make tumblers with the ribbon machine since then?

A. To what extent, I cannot say.

Q. But they have made some?

A. Yes, sir.

Q. And sold them commercially?

A. Yes, sir.

Q. Do you remember that a time came, some time in 1930, when there was a discussion between your company and Hartford as to a revision of your glass contract of 1922?

A. I have no personal knowledge of that. There was a discussion between two members of the organizations, that I have learned of: Mr. Knox Smith, and a man who was then in the employ of Corning, as counsel—Mr. Green.

Q. You said you had no personal knowledge: You mean by that you did not engage in the actual negotiations?

A. I did not participate in any discussions, is what I meant.

Q. You, of course, talked with the Corning people?

A. No, sir.

Q. You knew that Judge Green was having conversations with Mr. Knox Smith?

A. I learned that at some time, yes.

Q. What was the nature of the discussions, as far as you learned them from your people?

[fol. 3254] A. What I learned was that they were corresponding about the subject. To be very frank, it seemed to me that they were wasting time. I gave very little attention to what I heard of.

[fol. 3255] Q. Why were they wasting time?

A. From what I knew of it I didn't think it was necessary.

Q. You didn't think it was necessary to revise the contract?

A. No.

Q. During those discussions wasn't your company interested in extending its field of ware into the general glass container field?

A. It may have been proposed during that time by Judge Green, yes.

Q. What about the executives of your company?

A. I don't think we ever discussed it as a group. I am quite sure it never came up at any Board meeting. Mr. Curtiss may have discussed it with Judge Green.

Q. Hasn't your company from time to time been interested in going into the general glass container field?

A. We have talked about it from time to time. We never had any real interest in doing it.

Q. We have some evidence before you signed your contract you were interested in it?

A. We often discussed whether we should go into other fields.

Q. But you haven't?

A. No.

Q. Except for the small quantity of tumblers you make?

A. Yes. We did make some Pyrex fruit jars and possibly small quantities of other ware.

Q. In addition to the Tucker, Reeves & Beatty, and the Howard matter, which you said you knew about, you also [fol. 3256] knew about the Miller matter at the time it took place?

A. I have no recollection of it, but I think I did.

Q. You approved it, did you not?

A. If I was asked to I probably did because the Hartford people advised it.

Q. Did you learn about the Kucera feeder?

A. I don't remember anything about it.

Q. Were you told about the Rankin feeder?

A. The Rankin feeder, as I recall it, was a British feeder.

Q. They had patent application in this country, did they not?

A. I don't know.

Q. You didn't hear about it at all?

A. I don't remember that I heard about it.

Q. You knew, did you not, in connection with these various acquisitions half of the money was being paid by Owens and the other half was being paid by Hartford-Empire—I am talking about Tucker, Reeves & Beatty, and Miller, and the ones you knew about?

A. I don't think that was so as to Howard.

Q. The Howard acquisition preceded the 1924 contract?

A. That is true.

Q. I am talking about the Tucker, Reeves & Beatty, and Miller, that you know of?

A. Yes.

Q. You knew the arrangement for financing the Tucker, Reeves & Beatty deal was made by Owens and then later on Hartford-Empire reimbursed Owens $800,000?

[fol. 3257] A. I may have known that at that time.

Q. Do you remember there was some discussion in 1929 about a Knox-O'Neill automatic device for making bottles?

A. Yes.

Q. What is your present recollection that you knew about it at that time?

A. It involved some large sum and I had some interest in asking Mr. Smith about that. It was represented that a large number of Knox-O'Neill machines were about to go out, or something to that effect, and two or three outstanding things I remember about that were a large sum of money was asked and Hartford was considering it. I was talked to by either Herbert Knox Smith or Goodwin Smith, or both, I don't recall, and I was skeptical about this large number of machines going out suddenly, and of the new type, and I asked for more proof that that was a good machine, and I opposed the purchase because I didn't think we had sufficient data to justify the purchase.

Q. Were you informed in 1933 of the acquisition by Hartford-Empire of certain feeder rights in connection with a sale of assets by O'Neill Engineering Company?

A. That was a much smaller acquisition of a later date.

Q. Of annuity which would come to $200,000?

A. Whether I was informed before or after the fact, I don't remember, but I think I knew about it.

Q. You heard about it some time?

A. Yes.

Q. And you approved it after you learned about it?

[fol. 3258] A. I don't know whether I was asked. That was rather detail matter. Whether I was asked in advance whether it should be done, or told it had been done after it was done, I don't know.

Mr. Isseks: At this time I offer as the next Government's Exhibit a letter dated June 27th, 1929, addressed to the witness, apparently written by Mr. Smith. It was given to us by counsel for Hartford. This is a carbon copy of original letter. It was given to us by counsel for Hartford several days ago. Counsel gave us a carbon copy before. Now they are giving us a photostat. This is marked Government's Exhibit 703. I offer it in evidence, Your Honor.

The Court: It may be admitted over objection.

Thereupon, Government's Exhibit No. 703 was read to the Court by Mr. Apsey, of counsel for the government.

Mr. Isseks: At this time, Your Honor, I offer as Government's Exhibit 704 what purports to be a copy of a letter received from Mr. Falck on July 10, 1929, addressed to Her-

bert Knox Smith, signed by the witness, stipulated to as genuine by Hartford-Empire at page 16 of the stipulation.

The Court: It may be admitted.

Thereupon, Government's Exhibit No. 704 was read to the Court by Mr. Kramer, of counsel for the government.

Q. Did you write that letter, sir?

A. Yes, sir, I did.

Q. Mr. Falck, you knew when you first became associated with Hartford-Empire in 1922 and '23 that a substantial [fol. 3259] block of the Hartford-Empire stock was owned by Monongah Glass Company?

A. Yes, I always understood that.

Q. You knew your company had some 41 per cent, and that the other 50 odd per cent was owned one-third by the Beechnut and one-third by the Hartford group, so-called, and one-third by the Monongah?

A. I think that is an approximate division, yes.

Q. You learned some time during 1927 that Monongah was in difficulty?

A. I learned that if '27 was the correct year.

Q. Whatever the time is, you learned it?

A. Yes.

Q. And that Monongah was interested in disposing of its stock interest to Hartford-Empire?

A. Yes.

Q. Somebody took the matter up with you, did they not?

A. Yes.

Q. Who was that, sir?

A. I think Herbert Knox Smith.

Q. What was the conversation, if you had any?

A. I don't remember whether I had any conversation or whether it was in letters, or both, but because of the so-called preemption agreement which gave person or persons and corporations in the Hartford group, that is the 55 per cent, first right to purchase any stock offered for sale out of that 55 per cent, and then gave the Empire group a [fol. 3260] right to purchase any that was not taken by the other group before it could be offered to outsiders, because of that contract, that preemption agreement, we were asked whether we would waive that right and allow the sale to outsiders.

Q. What did you say?

A. We waived our right.

Q. To let some of the stock be sold to outsiders?

A. Yes.

Q. You knew who the outsiders were?

A. No, I never knew much about them. It was a Monongah matter, and the only thing we had to decide was whether or not we wanted to buy any of the stock in our own right before waiving.

Q. You knew that the substantial part of the stock, 10,000 shares, would go to the Hocking Glass group, did you not?

A. I knew it did eventually, but at that time I was not particularly interested.

Q. By eventually, you mean shortly after it took place?

A. After it was sold or perhaps before it was sold, who intended to buy it.

Q. Did you mention the proposition of it being sold privately to a small group rather than publicly through a banking house?

A. I don't think I raised any question.

Q. Did you make any inquiry as to why this Hocking Glass [fol. 3261] Company group should be given an opportunity to buy this substantial block of stock in Hartford-Empire rather than have it sold generally to the public?

A. I think I was told in the beginning by Mr. Smith probably that there was a proposal to sell to—I never knew just what the Ohio group meant, but there was a proposal to sell I think to people who were either interested in the future of the Monongah Company or in some way connected with that situation. I don't know much about that, those container companies and their relations.

Q. Your company did not take any?

A. No.

Q. You knew also, of course, that the Hartford group, principally Mr. F. Goodwin Smith and Mr. Knox Smith, were going to take a substantial block of this 18,000 shares?

A. Yes, but I think only a part of it.

Q. They took some; you knew that?

A. Yes.

Q. Did you know at the time this was all in connection with the fact Monongah was having financial difficulties?

A. Yes. I knew Monongah was in financial difficulties because I was told by Mr. Smith they were in difficulties. They owed the Hartford-Empire Company money, and I

think I was told they owed Beechnut money, and that the stock was an asset—perhaps one of the best assets they had to realize cash with.

Q. Were you ever told that certain bankers in Cleveland [fol. 3262] were willing to finance the sale of these 18,000-odd shares at a price substantially higher than was paid by the Ohio group and the Hartford-Empire group?

A. It is my recollection that a proposition was named to us, or to me representing the Empire group, and we were asked whether we would waive or whether we wanted to insist on our rights to take, and that price seemed high to me and it is my recollection it was sold eventually at a lower price.

Q. Substantially lower?

A. I think it was forty-something in the first place and thirty-something in the second.

Q. Were you given an option, or opportunity to buy at the low price?

A. I can't say whether we knew before we finally waived —whether we knew it could be bought at a lower price or not.

Q. You never answered my question: did you ever learn that bankers in Cleveland offered to market these shares at a price substantially higher than it was sold to the Ohio group?

A. The Hartford-Empire group? I don't think I ever knew there was an actual offer at a higher price than was obtained.

Q. Did you ever learn there was discussion with bankers?

A. Yes. I remember there was some. It is a little hard for me to tell what I remember now and what I have heard during the trial of this case.

Q. I understand that, sir. It is one of the difficulties [fol. 3263] about a trial of a case. I am asking what you remembered way back?

A. The principal feature I remember was we were asked whether we want to take that stock at either 42 or 43 or some such price and we thought it was high and we were not particularly interested in owning any more of that stock. We waived our rights. We paid very little attention to these other transactions, because they were in the hands of our friends in Hartford and as we decided we did not want the stock, we did not attempt to participate in the other end of it.

Q. Anything else you want to say?
A. That is all.

Mr. Isseks: At this time I offer Government's Exhibit 705, carbon copy of a letter dated June 6, 1927, addressed to the witness, marked "Confidential and Important", signed Mr. F. Goodwin Smith. I offer it in evidence. It is stipulated as to genuineness by Hartford-Empire at page 14.

The Court: It may be admitted.

(Mr. Kramer reads Exhibit 705.)

Q. At this time, Mr. Falck, I show you Government's Exhibit 271, which is a letter dated October 27, 1927, addressed to you and signed by Mr. F. Goodwin Smith. I direct your attention to the second page where Mr. F. Goodwin Smith purports to set forth your reason for not participating in this particular purchase, or, rather, he says what your position is, and I ask you whether he correctly sets forth your position in that part of the letter. [fol. 3264] You may want to read the whole letter, sir.

A. (Witness reads.)

Q. My question, sir, is whether what Mr. Goodwin Smith says on page 2 does state your position? Does that refresh your recollection that it was your position at the time?

A. I don't believe I ever stated my position in just this way. I would not know. That was not exactly my position. Parts of it were.

Q. Which parts of it were your position and which parts were not?

A. In the first place this seems to assume we had some rights to take the stock and we had nothing but secondary right after Hartford decided whether they would take it or not.

Q. Don't you remember you said when the deal was first mentioned to you that you would waive any right if Hartford would waive any right?

A. Yes.

Q. In other words, you first were to know who in Hartford-Empire Company should take any stock?

A. The first thing was, we were asked to waive our rights if the procedure of the preemption agreement were not followed. Hartford did not say whether they would

take any stock or how much stock but asked us whether we would waive our rights so it could be handled either among them or among outsiders, as they may see fit, and I think I asked how much of the stock is Hartford going to take.

[fol. 3265] Q. You remember at first you said both sides, the Hartford group and Empire group, should have nothing to do with it as indicated in Item 1?

A. Yes, I presume.

Q. That was your initial position?

A. Yes.

Q. Then you receded further on and said you did not object if they took a little bit?

A. Yes. I would not have said it just as Mr. Smith did. In substance I was taking the position that if the stock which had been spread among all the original Hartford stockholders was to be concentrated in one spot, or one section of that original holding, I would like to know that. I would like to know how much they were going to take before we waived so if we should like to take some part of the balance we could decide.

Q. What you object to is, "45 per cent is as good as control"?

A. Yes, I am sure I never said that.

Q. You object to him saying 45 per cent was as good as control?

A. Yes.

Q. It was, though, wasn't it?

A. We never put it to a test.

Q. By that you mean you never tried to veto anything on a 45 per cent basis?

A. We never came to a vote of that kind.

Q. Mr. Goodwin Smith thought 45 per cent was as good as control for future purposes?

A. He says what he recalls has been my position. I don't know if I said 45 per cent was as good as control.

[fol. 3266] The Court: You may suspend at that point. The bailiff may recess court until 10 o'clock tomorrow morning.

(Night adjournment.)

[fol. 3267] (At 10 o'clock a. m., Tuesday, April 8, 1941, the trial was resumed.)

The Court: Proceed.

Q. Mr. Falck, you recall that in 1936 your composition patents on heat-resisting ware expired by limitation?

A. That is correct.

Q. Do you remember that Anchor-Hocking Company then expressed a desire to go into the manufacture of heat-resisting ware?

A. Never to me personally. I understood from my associates that they did.

Q. You learned that both as an executive of the Corning Glass Works and as a director of the Hartford-Empire Company, did you not?

A. Yes.

Q. And at the same time, or on or about the same time Owens-Illinois Glass Company expressed a desire to go into the heat-resisting ware field?

A. I have no knowledge of that.

Q. Have you ever heard of that?

A. I may have heard of it. I may have heard discussion, but whether a request——

Q. There is an opinion, marked in evidence, indicating they were interested in the matter.

A. It may be; I don't know of any request.

Q. Didn't you hear Mr. W. J. Belknap give an opinion that while legally they could not use the Hartford feeders for making heat-resisting ware, they might be able to use the [fol. 3268] Tucker, Reeves and Beatty feeders, or perhaps they could make them and use them for heat-resisting ware; did you know of that?

A. It may be; I don't recall it.

Q. You did hear about the Anchor-Hocking situation?

A. Yes, I did.

Q. You had some negotiations in connection with that?

A. Not personally.

Q. You had some conferences with Mr. F. Goodwin Smith and Mr. Amory Houghton about the matter?

* * * * * * *

[fol. 3269] Mr. Isseks: 376 is a letter dated February 7, 1938, from F. Goodwin Smith to Amory Houghton. It says:

"I enclose copies of two letters received from W. J. Belknap dealing with the question as to whether Owens could

use Tucker, Reeves and Beatty feeders or Hartford feeders to produce insulators made of heat-resisting ware.

"As I read both these letters, our contracts, as they now stand, do not permit Owens to use any licensed feeder for the manufacture of a heat-resisting insulator as defined by our license and lease agreement.

"The foregoing statement seems true, but there is quite a nigger in the woodpile, due to the fact that in 1925 when Tucker, Reeves & Beatty rights were purchased, Owens retained for themselves a non-exclusive license under Tucker, Reeves & Beatty patents. Thus if Owens, under the Tucker, Reeves & Beatty patents, could develop a feeder [fol. 3270] which did not infringe any of Hartford's other patents, they can do what they please with them. It seems quite possible to us here that Owens could design a feeder which might come under the Tucker, Reeves & Beatty patents and yet not come under Hartford's other patents, and proceed to make a heat-resisting insulator. Such a feeder would probably not be suitable for making bottles but might be entirely adequate for producing a pressed insulator. Therefore, we feel probably Levis and Belknap have some justification for the position they are now taking, and it would seem to us detrimental and dangerous to both our interests to permit a situation where Owens would start to scheme and try to develop some feeding mechanism which avoided our patents."

Q. Did you ever see that letter before?
A. I don't think so.

Mr. Isseks: Does that satisfy counsel?
Mr. Middleton: Yes. The inquiry is limited, then, to insulators?
Mr. Isseks: I said "heat-resisting ware". I had forgotten it was limited to insulators.
Mr. Middleton: I thought it was limited to insulators.

Q. Did you ever see the opinions W. J. Belknap wrote, one with regard to the Tucker, Reeves & Beatty rights, and the other in regard to the Hartford rights?
[fol. 3271] A. As I stated when you asked me, I remember the Hocking request. I think I remember reading an opinion on it from Mr. Belknap but I do not remember the Owens request.

Q. Don't you remember Mr. Levis and Mr. C. B. Belknap,

who was then executive vice-president of Owens, took the position their company should be entitled to manufacture insulators made of heat-resisting ware in view of the Tucker, Reeves & Beatty rights?

A. It may be so, but I wasn't in touch with the details of Corning's business during those years.

Q. Mr. Amory Houghton might recall it?

A. Yes.

Q. I was asking you about the Anchor-Hocking situation. Did you see a memorandum Mr. Safford wrote of the rights in respect to the heat-resisting ware situation as affecting Anchor-Hocking?

A. I don't recall.

Mr. Isseks: At this time I would like to offer the next Government's Exhibit, letter dated December 8, 1937, written to the witness, signed apparently by Mr. Amory Houghton, stipulated as to genuineness by Corning Glass Works.

The Court: Who is the author of this letter?

Mr. Isseks: Apparently Amory Houghton. It is initialed "AH" and stipulated as to genuineness by Corning. That is Mr. Houghton, is it not, Mr. Sayles?

Mr. Sayles: Yes.

Mr. Isseks: Written to the witness; a very short letter. 706. I offer it in evidence. (Reading):

[fol. 3272] "I enclose memorandum I mentioned to you on the telephone today. I thought you might want to read this prior to our discussion with Goodwin on Friday."

Note on the bottom, "memo A. F. Safford, Jr. to F. Goodwin Smith, dated November 24, 1937, subject, Hocking field of ware, enclosed".

Your Honor, that document referred to in the bottom is Government's Exhibit 371, so identified through the witness F. Goodwin Smith.

Q. I show you Government's Exhibits 706 and 371, and I ask you whether 371 is not the enclosure referred to in Government's Exhibit 706?

A. Well, there is nothing from which anyone could identify it as being the same, because the letter doesn't refer to whose memorandum or any date.

Q. Look at the bottom, the notation apparently made by somebody at Corning.

A. I hadn't looked at that. Yes.

Q. The same document?

A. Yes, the same document.

Q. Do you remember having a conference with Mr. F. Goodwin Smith about this problem of Anchor-Hocking's desire to go into the heat-resisting ware field?

A. I don't remember any specific conference but I remember the question was raised by Mr. Smith several times.

Q. Did Mr. Smith tell you Mr. Collins was in a pretty ugly mood about this particular subject-matter?

A. Very likely.

[fol. 3273] Q. Did he tell you Mr. Collins was actually in production of heat-resisting ware?

A. No, not as far as I know that date.

Q. Did it go into production sometime in 1937 or '38?

A. Not to my knowledge.

Q. There is some testimony here——

A. It may be. I don't know of it. I know he continually asked for the right over the period.

Q. And until October, 1940, you continually turned him down?

A. That is correct. When you say "you" you mean "Corning"?

Q. I mean Corning.

A. That is correct.

Q. And Hartford, too?

A. Well, Hartford had no right to give it. It had already been given to Corning.

Q. In other words, they said, "We have a contract that gives Corning the exclusive right and we cannot give it to you"?

A. Correct.

Q. Don't you remember Mr. Collins was actually making heat-resisting ware and trying to market it?

A. No, I really don't remember it. I don't think it would have been anything substantial, or I would have known of it.

Q. I believe there are some documents in here showing some of your sales executives saw some?

A. That may be.

Mr. Sayles: I object to that statement, and move it be [fol. 3274] stricken out.

The Court: Yes, if it is a mere statement.

Mr. Isseks: I would like to see Government's Exhibit-372, 373, 374 and 375.

Your Honor, at this time I would like to call the witness' attention to Government's Exhibit 374, being a memorandum from Mr. C. D. LaFollette. Who is Mr. LaFollette in your company?

A. What date is that?

Q. December 9, 1937, about the same time of these documents we are talking about.

A. Well, at that time Mr. LaFollette was probably still manager of the housewares division.

Q. This shows copies went to Dr. E. C. Sullivan, Amory Houghton, G. D. Macbeth, J. L. Peden, G. W. Cole and P. W. Jenkins. I call your attention to the first paragraph, in which he says:

"Some additional information has been obtained from Mr. Fenier"——

who is Mr. Fenier?

A. I have no idea.

Q. —"in regard to the possible ovenware line of the Hocking Glass Company. His letter follows: "I called at the Barn in Reading, Ohio, today, relative to the glass pie plate I gave to Messrs. Jenkins and Belknap. I talked with Mr. Bachmann, who has just come back from the Hocking plant, and he stated he stood at the lehr watching the pie [fol. 3275] plates come out, 'and in talking with someone at the plant they stated that this is Hocking's new line, the name of which is to be Frirock. Mr. Bachmann stated further that they told him the glass was running very cordy and seedy, due to the heavy pull. He also intimated that this glass would stand baking.' "

Does that refresh your recollection Anchor-Hocking was actually making some type of ovenware in 1937?

A. Not at all. That is a sales department detail I knew nothing about.

Q. Do you remember about that time Mr. C. B. Belknap reported to your company he had talked to Mr. Collins and Mr. Collins had agreed not to market the heat-resisting ware without first talking to the Corning people and their associates?

• • • • • • •

[fol. 3276] A. No.

Q. I show you Government's Exhibit 372, in which Mr. C. B. Belknap refers to Mr. Amory Houghton, your executive head, with reference to the Pyrex situation, which you talked about in New York at their last meeting, dated December 6, 1937, and it says:

"I have secured a promise from Ike he would not start to market that line without first discussing it with you and your associates. Yours very truly. Bun."

Does that refresh your recollection?

A. No.

• • • • • • •

[fol. 3277] Q. Didn't you learn Mr. I. J. Collins discontinued the manufacture of heat-resisting ware they were planning to make?

Mr. Fuller: If the Court please, I object to the form of the question.

The Court: Objection overruled; he may answer, if he knows.

(Question read.)

The Court: I will sustain that objection.

Q. Isn't it a fact you learned that Mr. I. J. Collins' Company did not go into the marketing of heat-resisting ware after they had first put some heat-resisting ware on the [fol. 3278] production line?

A. I don't want to deny that these things happened, but I, personally, didn't know many things that others in the Corning organization did. I do not think I knew Mr. Collins ever had any heat-resisting ware on the market. I knew he sought to get a right to do it, repeatedly.

Q. Now, Government's Exhibit 706, which was received by you from Mr. Amory Houghton, referred to a meeting. This is dated two days after Government's Exhibit 372, the one from C. B. Belknap to Mr. Amory Houghton which I asked you about, and you said you had no recollection of it. Government's Exhibit 706 is dated two days later. Did you see Mr. Goodwin Smith about the subject-matter of Government's Exhibit 706?

A. I haven't any idea.

Q. Did you talk to Mr. Goodwin Smith about the subject-matter of Government's Exhibit 706?

A. Just let me read what is the subject-matter of Government's Exhibit 706?

Q. The Anchor-Hocking situation, as to Hocking's field of ware.

A. I have already said repeatedly I talked to Mr. Smith about Collins' desire to make heat-resisting ware.

Q. Did Mr. Smith tell you that Mr. Collins was in production?

A. I have no recollection of anyone telling me Collins was in production.

Q. Did you talk to I. J. Collins about it?

A. I don't think I ever discussed the subject with him.

[fol. 3279] Q. This much is true; that until very recently, October 8, 1940, Mr. I. J. Collins' company did not market heat-resisting ware?

A. So far as I know they did not.

Q. Now, did the Owens Company ever ask you, prior to 1940, for the right to manufacture tumblers on your ribbon machine?

A. I recall at some time or another Mr. Amory Houghton or Mr. Goodwin Smith saying something of the sort to me.

Q. How long ago was that?

A. I haven't any idea, Mr. Isseks.

Q. Was it as early as 1931?

A. I have no idea. It was a casual—so far as I was involved, it was some casual statement of matters they were handling.

Q. I show you Government's Exhibit 382, and ask you whether that refreshes your recollection? Mr. Dorsey writes to Mr. Curtiss there that he had a visit from Henry Carter of the Owens Company, and Henry Carter informed Mr. Dorsey Owens-Illinois is interested in the production of tumblers by the ribbon machine, and asks Corning not to dispose of its rights without taking the matter up with Owens-Illinois. Does that refresh your recollection?

A. No, I have no recollection of that; it wasn't in my field of work.

Q. Did you learn at any time the Owens people were contemplating developing a bulb machine which would be something like your 399 ribbon machine of your company?

A. No.

Q. Never heard of that?

A. No.

[fol. 3280] Q. I show you Government's Exhibit 672, which is a copy of a memorandum from Mr. Carter to Mr. C. B. Belknap, in which reference is made to the fact Mr. Soubier had prepared a set of drawings, and contemplated filing an application with regard to patents on a bulb machine that would be similar to the ribbon machine, and ask you whether you ever heard of that proposal?

A. This didn't come to anyone in our organization.

Q. I didn't suggest it did. I am just asking you whether that refreshes your recollection the matter was brought to your attention?

A. No.

Q. Never heard of it until now?

A. That Owens proposed to build a bulb machine?

Q. That Owens had an inventor who had prepared plans and drawings for a bulb machine.

A. Well, if I did it was something that was so unimportant, apparently, I don't recall it.

Q. You mean it would be unimportant to your company if someone else would develop a machine that would be something like the 399 machine?

Mr. Middleton: I object.

A. No, but nobody had such a machine under development that I know of.

The Court: Overruled.

* * * * * * *

[fol. 3281] Mr. Sayles: I object to this whole colloquy with the Corning witness on the stand. There is no evidence at all any notice came to Corning, and he says it does not refresh his recollection.

The Court: Corning isn't concerned so far. The witness has said he doesn't know anything about it.

Mr. Sayles: The colloquy going on at this time is unfair to Corning.

The Court: I don't see it prejudices Corning any, because the witness has absolved Corning, as far as he is concerned.

[fol. 3282] The writer of this communication discusses the advisability of making an appropriation of the funds of the Owens-Illinois Company to be used by Mr. Soubier in

an experimental way. Aside from that there is no indication Mr. Soubier, as the inventor of this machine, is working for the Owens-Illinois Company, and that is the only reference I see.

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[fol. 3283] Q. My question is whether you were advised that Owens had an inventor who claimed he had an invention on a machine that, if successful, would be in competition with your machine?

A. No.

Q. Weren't told about it at all?

A. No, I don't believe I knew about it.

Q. You knew, did you not, that Mr. C. B. Belknap and Mr. Curtiss were seeing each other right along in connection with various matters involved in both companies?

A. I know Mr. Curtiss saw thousands of people.

Q. And he was seeing Mr. C. B. Belknap?

[fol. 3284] A. When?

Q. In 1936 and '37?

A. Yes, and for many other years.

Q. You learned, did you not, in the early part of 1937 there were negotiations between the two companies in regard to your company giving Owens a license to manufacture tumblers, your company getting a right from Owens in connection with the Saf-edge type of tumbler, under the so-called Burn-off patent?

A. Well, I knew about it, and I knew there were negotiations between my associates, who were active officers, and Owens, from time to time, but I knew no details nor any dates.

Q. You knew about the subject-matters?

A. I just know that such a subject-matter was mentioned.

Q. As to what? In other words, I want to get the statement from you.

A. When I say such a subject-matter, I am talking about tumblers, and Owens.

Q. Owens to have the right to use your ribbon machine to manufacture tumblers?

A. I would say I knew that subject-matter was discussed. I cannot say what the proposals were or the details.

Q. You knew your company, in turn, was trying to get certain of their patents in connection with the Saf-edge on tumblers?

A. I don't know whether we were trying to or not. I know the subject was discussed.

[fol. 3285] Q. Did you ever give a license to Owens in connection with your ribbon machine for any purpose?

A. Not that I know of.

Q. Did you ever have a license from Owens in connection with the Burn-off patents for the Saf-edge on tumblers?

A. Are those the old Libbey Company's?

Q. Yes.

A. I think we did, if those are the old Libbey Company's.

The Court: In 1936 and '38 you were not an officer of the Corning Company?

The Witness: I was a director and chairman of the board, and living in Elmira, and went to Corning on occasion, in touch with the active people.

Q. You were familiar, were you not, with the litigation relating to the feeder that Hartford had applications for patents?

A. No, I was never familiar with any of that litigation.

Q. Not even in a general way?

A. I heard it spoken of.

Q. You knew, did you not, that there was a suit by Hartford against Hazel-Atlas in Pittsburgh which was decided against Hartford by Judge Gibson, in 1930?

A. Yes, particularly at the time of the decision I knew more about it then than at any other time.

Q. How did you look on that decision, as a director of Hartford, chairman of the Board and director of Corning, and also as president of Empire Machine Company?

A. I looked upon it as a vindication of what I had been [fol. 3286] told and believed for years, that Peiler was the first inventor of this new thing in the glass world.

Q. I asked you about Judge Gibson's decision. You do not want that answer to stand?

A. I thought you were referring to the final decision. I don't know which judge Judge Gibson was.

Q. I was referring to the District Court decision in 1930. You don't want the answer to stand?

A. That District Court decision was against Hartford, was it not?

Q. Yes.

A. I don't wish the answer to stand as to that decision. I knew so little of those matters I didn't know which judge Judge Gibson was.

Q. And you knew, did you not, between the decision of Judge Gibson, which was adverse to Hartford, there was an appeal taken to the Circuit Court of Appeals?

A. Yes, and it was that decision I was referring to a moment ago.

Q. I am asking you for your state of mind during the interval between Judge Gibson's decision and the decision of the Circuit Court of Appeals, which was almost two years later,—two years and two months later?

A. I cannot recall my state of mind. I suppose I was disappointed. That was a District Court decision; it wasn't final but I undoubtedly was disappointed by it.

Q. You were troubled, were you not, for fear if the decision of the District Court were affirmed the collection [fol. 3287] of royalties which Hartford was making might cease?

A. Well, I knew there were a good many patents, I knew very little about them and about the litigation. Undoubtedly I was disappointed about that decision: I have no definite recollection of it.

Q. You did hear about the decision in the Circuit Court of Appeals?

A. Yes.

Q. Then you heard also, did you not, of the decision of the Circuit Court of Appeals of the Sixth Circuit, where there were some other patents involved?

A. About the same time I heard from Mr. Smith about one or two other patents.

Mr. Isseks: I would like to have Government's Exhibit 131.

Q. I show you Government's Exhibit 131, which is a telegram sent to you by Mr. F. Goodwin Smith, certified as a true copy by Corning and your counsel, and I direct your attention to the fact that the telegram states that the Cincinnati Court of Appeals opinion conflicts considerably with the Eighth Circuit Court of Appeals decision on the phase

patent, "so that the Supreme Court is likely to grant certiorari unless we can get Hazel to become a licensee. Hope to see McNash next week." Do you remember getting that telegram?

A. I know now I did get it.

Q. And the problem of an application for certiorari by the defendants in the Sixth Circuit case, was one which was [fol. 3288] brought to your attention by Mr. F. Goodwin Smith?

A. In that telegram.

Q. Did Mr. Goodwin Smith also talk to you about the problem of Hazel-Atlas' petitioning for certiorari in connection with the Third Circuit decision in the case?

A. Yes, somewhat; that was one of the possibilities.

Q. That was one of the considerations taken into account by you and Mr. F. Goodwin Smith in negotiating a settlement with the Hazel-Atlas people?

A. Yes. There was a settlement of that case.

Q. I mean the fact they were considering taking the matter up to the Supreme Court by petition for writ of certiorari was one of the considerations taken into account?

A. I suppose it was.

Q. You were informed, were you not, from time to time by Mr. F. Goodwin Smith, about the negotiations that were being had by him with the Hazel-Atlas and the Owens people which finally led up to the July 1, 1932, contract?

A. Well, undoubtedly I was.

Q. At this time I would like to show you Government's Exhibit 140, which is a letter marked, "Registered Letter, Special Delivery", to you, dated June 15, 1932, from Mr. F. Goodwin Smith, in which he sets forth certain considerations regarding your proposed negotiation leading up to the final settlement, and ask you whether you remember receiving that letter?

A. I have no recollection of this specific letter addressed [fol. 3289] to me.

Q. Perhaps I can refresh your recollection. It is a letter in which he said at the end, "I am destroying the copy", but he didn't.

A. Yes, I have heard this referred to.

Q. Do you remember that letter?

A. No.

Q. You have your copy, I assume?

A. I don't know.

Mr. Isseks: Does counsel know whether Mr. Falck has his copy, original of the letter?

Mr. Sayles: It is not in Corning's file. It was sent to him in Elmira. That is all I know.

Q. My question is whether you received that?

A. Well, I have no definite recollection of this letter but I presume I received it.

Q. You mean you have no doubt about it?

A. No, I don't see why I should doubt receiving it.

Q. Did you approve the final arrangement that was made between Hartford-Empire on the one hand and Hazel-Atlas on the other, and the separate agreements between Hartford and Owens? I believe the minutes show your presence.

A. I approved the general principles of the agreement, as I understood them.

Q. You approved participation by Hazel?

A. Yes.

Q. In one-third of the divisible income over and above $850,000?

[fol. 3290] A. Yes, that was one of the main features I knew of in advance of the making of the contract.

Q. Do you remember after the agreement was made, or rather, the group of agreements,—eight of them, I believe, in evidence,—all dated July 1, 1932, between the various parties, some controversy arose between Hartford on the one hand and Hazel-Atlas on the other, with regard to whether Hazel-Atlas should pay royalties on the plug feeder?

A. Yes, I remember Mr. Smith took that up to some extent with me.

Q. Do you remember also at the same time there was a controversy with regard to whether or not Hartford should be obliged to get a decision of the Circuit Court of Appeals other than the Third Circuit in connection with the patent in issue in the Third Circuit case, within a two-year period?

A. Yes, I learned of that provision when that question came up.

Q. And you were asked to give your views?

A. Yes.

Q. As a director of Hartford-Empire Company?

A. Yes.

Q. And you expressed certain views in writing, did you not?

A. Well, I don't know; I presume I did.

Mr. Isseks: At this time I would like to offer the next Government's Exhibit, 707, letter of June 20, 1933, to F. Goodwin Smith, from A. D. Falck, subject: "Situation [fol. 3291] between Hartford-Empire and Hazel-Atlas", which was furnished us by one of counsel, either for Hartford or for Corning, yesterday. There is no dispute about the genuineness, is there?

Mr. Sayles: I don't believe I know.

Mr. Isseks: Well, I will ask the witness, whether he wrote it. That, perhaps, is the best way.

A. I have a copy in our file, so I do not doubt but what I wrote it.

Mr. Isseks: Thank you very much. I don't know which one of the gentlemen furnished it to us.

Mr. Wall: I think we did. It probably came from the Hartford files.

Mr. Isseks: Before I offer it in evidence I would like to ask a question or two.

Q. What was the controversy, as you recall it now, with regard to the plug feeder phase of the contract between Hartford and Hazel-Atlas?

A. As I recall it, as I understand it after reading the copy of this exhibit, it comes back to me, that it is a question of whether the plug feeder infringed the Hartford patent, and that if it did not they were not to pay royalties, not required to pay royalties.

Q. Was there any arrangement under the 1932 contract as to how to dispose of that controversy?

A. As I recall it there was a provision for arbitration.

Q. You were directing yourself to that problem?

A. The question whether that was up, whether there [fol. 3292] should be arbitration under the contract, or whether there should be, as I recall it, a demonstration, which was intended to convince Mr. Philbin that the plug feeder infringed.

Q. At that time Owens had an interest in the matter because they were a one-third participant in the divisible income, in 1933?

A. Yes, they were.

Q. And do you know whether or not you sent a copy of this memorandum of yours to Mr. C. B. Belknap?

A. I would very much doubt it. I don't think I ever sent him a copy of anything.

Q. There is a notation, "Copy to R. D. B., W. J. B."

A. Yes.

Q. I presume "R. D. B." is Mr. Brown and "W. J. B." is Mr. Belknap?

A. That is W. J. Belknap, who was an employee of Hartford. You asked me whether I sent one to C. B. Belknap.

Q. I was talking about C. B. I asked you whether you recalled sending one of those to him?

A. No, I don't.

* * * * * * *

[fol. 3293] Q. Will you look at the handwriting; can you identify the handwriting on the original?

A. No.

Q. What about the handwriting in the right-hand corner?

A. No.

Q. Can't identify it at all?

A. No. When that went out of my office there was none of that script on it.

* * * * * * *

Mr. Isseks: At this time I offer the document without the handwriting thereon.

The Court: It may be admitted.

(Government's Exhibit 707 read by Mr. Kramer.)

[fol. 3294] Mr. Isseks: Your Honor, at this time I should like to offer in evidence Government's Exhibit No. 708, a memorandum entitled, "Memorandum Answering Mr. Falck's Memorandum of June 20, 1933—Hazel-Atlas Plug Feeder"; dated June 27, 1933. There is stated on it, "By C. B. Belknap". It is stipulated as to genuineness by Corning, Item 801. There is a notation on it. I will ask the witness whether he can identify it.

Q. There is a notation in the upper left hand corner, the initials: "A. H." Do you recognize those as anybody's hand writing?

A. No. I know a party with those initials, but I do not recognize that handwriting.

Q. It does not look like Mr. Amory Houghton's handwriting?

A. No, sir.

Q. Do you remember receiving a memorandum, answering your memorandum, by Mr. C. B. Belknap?

A. I know there is one in Corning's files. I don't know whether I received it or not.

Mr. Isseks: I offer it in evidence, Your Honor.

* * * * * * *

[fol. 3295] The Court: It may be admitted subject to further examination and further identification by Mr. Belknap.

Mr. Isseks: All right, sir. I point out that Corning has stipulated as to the genuineness of the document as coming from its files.

Mr. Sayles: We do not question the document; but, if the Court please, that certainly is a different typewriting. Who [fol. 3296] wrote it, I don't know; I don't know whether the witness knows; I doubt very much if he knows.

The Court: Why not ask the witness?

Mr. Isseks: I have asked the witness.

Q. Do you know whether Mr. C. B. Belknap wrote that?

A. I have no idea. All I know is that a copy of this was found in the Corning file.

Q. With that statement on, "By C. B. Belknap"?

A. I think this is an exact copy, yes. It is all in typewriting. It is not directed to anybody.

Mr. Isseks: Does counsel for Hartford know who wrote it?

Mr. Wall: No, I don't know who wrote it. The answer is, "No, I do not".

Mr. Isseks: Your Honor, counsel for Hartford does not know. I submit, until someone explains it away,—and I should like to see the original from which this photostat was made. Perhaps we can find out whether he wrote it. Since 1933 this has been in the files. It has the notation: "By C. B. Belknap".

Mr. Middleton: If the Court please, it might assist some to note the fact that on Government's Exhibit No. 707, the handwriting, which was not offered, indicates: "Copies to R. D. B. and W. J. B." That is W. J. Belknap, in all probability.

The exhibit now under discussion, 708, appears to have been written in response to 707; and it may be that W. J. [fol. 3297] Belknap wrote it, and somebody put the wrong Belknap's name on it. That is probably what happened.

Mr. Isseks: There is no evidence to that fact whatsoever. Here is a document stipulated as genuine by Corning ten months ago. It has this notation on it. It was found in their files, presumably put on there on or about June 27, 1933. The fair inference is, Your Honor, until there is positive proof to the contrary, that it was written by Mr. C. B. Belknap. I don't know, Your Honor. I have never talked to Mr. C. B. Belknap.

The Court: I am going to admit it, subject to further presentation of the document to Mr. Belknap.

Mr. Sayles: If I may have a word on this. The exhibit says: "We"—"As we see it today"—and there are two lines to sign. Now, who made it, I don't know. I do know that: "By C. B. Belknap" is in different typing. We can have the one from which it was photostated in court this afternoon, sir. There is nobody over at the hotel now where it is.

The Court: Will you defer this matter until we have the original in here?

Mr. Isseks: Your Honor, I think we will be through with the witness before luncheon.

The Court: You may proceed, subject to further identification.

Mr. Isseks: Your Honor, I wish to point out that the document which was found in the files of Corning has the date on it: "Received July" something—I think July [fol. 3298] 5th—in the executive offices of Corning. So even if Mr. C. B. Belknap disclaims ownership, it is admissible, it seems to me, for the limited purpose at least of showing the state of mind of the Corning people after they received it in their files. And it bears the initials on it, Your Honor will note: "A. H."

Mr. Sayles: I object to that statement and ask that it be stricken out. We certainly do not concede that something somebody since has sent us shows our state of mind.

Mr. Isseks: Your Honor has admitted other documents for the same purpose, found in the files.

The Court: I should like to have some further identification of this document. I have no objection, if you want to conclude with this witness, to proceed with this document,

subject to the striking of the document if it is not further identified.

Mr. Isseks: All right, sir.

Does Colonel Brown, the recipient of one of the copies, know who wrote the document?

Mr. Wall: Is that statement evidenciary?

Mr. Isseks: There is no mystery, so far as I am concerned. I don't know yet who wrote it.

Mr. Wall: I don't know yet whether Colonel Brown did. I want to find out. I would like to have the trial take its usual course rather than to be examined upon it myself now.

[fol. 3299] Thereupon, Government's Exhibit No. 708 was read to the Court by Mr. Kramer, of counsel for the government.

Q. I show you Government's Exhibit No. 708, and ask you whether you ever saw it?

Mr. Middleton: May I be pardoned to point out something in connection with this exhibit? Mr. C. B. Belknap, at the time this was written, was an officer of the Owens-Illinois Glass Company. His brother, W. J. Belknap, was an independent patent attorney in Detroit, representing Hartford. That is the reason we made the objection.

Q. I show you Government's Exhibit No. 708. Did you ever see it shortly after it was received at Corning?

A. I have no recollection.

Q. You would not doubt that it was received?

A. It was received by Corning in 1933. I was not very much there, as I said before, during those years.

Q. It is in answer to the memorandum you wrote?

A. Yes, sir.

Q. Did you see it?

A. I don't know.

Q. Do you question that you saw it?

A. I don't know whether I saw it.

Mr. Isseks: In view of the fact that we received for the first time Government's Exhibit No. 707, which is the original memorandum; and that Mr. Wall, as I understood him—I may be wrong—said that it came from Hartford's [fol. 3300] files, as distinguished from Corning's, I am very anxious, as anxious as anybody else in the court room, to

get the real author of No. 708. Perhaps Mr. Wall will help me out by furnishing me a copy or copies from the files of Hartford, which may have signatures thereon.

Mr. Wall: Certainly if we can find it, we will.

The Court: I think Mr. Sayles said he would try to locate the original.

Mr. Isseks: The original, as I understand it, is exactly like the photostat, which has typewritten in, apparently a different type, "By C. B. Belknap". There are two lines. Apparently there are two authors. I am very anxious to find out who they were.

Q. Mr. Falck, who told you that Hazel was willing originally to pay $100,000 more than they received? You said that in one of your memoranda?

A. Mr. McNash.

Q. Did he tell you that personally?

A. To a group.

Q. When was this, in connection with the negotiations?

A. Yes, just shortly before the contracts were made.

Q. Did you participate in the negotiations?

A. I was present at one meeting, a meeting at which Mr. McNash gave figures of his production and his estimate——

Q. Who else were present?

A. The Hartford officials. I have no distinct recollection of the individuals,—whether Mr. Belknap was there.

[fol. 3301] Q. Which Belknap?

A. W. J. Belknap; whether both Herbert Knox Smith and Goodwin Smith; but they were holding the meeting.

Q. Was anybody there from Owens?

A. I don't know whether there was anyone there at that moment, at the moment of Mr. McNash's making the statement I referred to; but Mr. Levis was there at some time during the day.

Q. Was Mr. C. B. Belknap there?

A. I don't remember.

Q. Are there more than two Belknaps involved, C. B. and W. J. Belknap—so that we do not have any more confusion?

A. Are there more?

Q. Yes.

A. I don't know any others.

Q. When reference is made to the Belknaps, it means both?

A. I suppose so.

Q. You were there. You were around. This is all new to me and the Court. When we refer to the Belknaps, there are two: C. B. and W. J.?

A. Those are the two I refer to.

Q. You heard counsel say that in 1933 C. B. was an executive of Owens?

A. Yes sir.

Q. And W. J. was in private practice?

A. Yes sir.

Q. I show you Government's Exhibit No. 165, a letter dated June 30, 1933, addressed to you at Elmira, appar-
[fol. 3302] ently signed by Mr. F. Goodwin Smith. I ask you to look at it and tell us if you received that letter. It relates to the same subject matter: Plug Feeder and the right to sue within a certain period of time.

(Witness examines document.)

Q. The question is whether you received it, sir?

A. I have no recollection of the subject matter. It is addressed to me. I presume I received it. I do not deny it.

Q. You testified before you were advised with regard to the problems that came up in connection with the Hazel-Atlas contract relating to the Plug Feeder and the fact that decision had to be had within a certain period of time?

A. Yes sir.

Q. This letter was one of the means by which you were advised?

A. I don't know. That letter is nothing but a rambling discussion of some interview Mr. Smith had with Mr. McNash.

Q. Mr. F. Goodwin Smith had with Mr. McNash, and Mr. Levis?

A. Yes, with Mr. McNash and Mr. Levis.

Q. He tells you in the letter, does he not, that Mr. Brown and the Belknaps will be in New York next week. That referred to the two Belknaps; not one?

A. Yes. That is one paragraph of the letter.

Q. Mr. C. B. Belknap was apparently in on this matter—this is three days after the memorandum—June 27, 1933—as to which there is some mystery who wrote it?

A. If I did, I would testify; I don't know.

[fol. 3303] I am asking you whether Mr. C. B. Belknap was in on this picture as well as W. J.?

A. I don't know.

Q. Apparently he was?

A. Apparently he was; certainly I have no recollection.

Q. There is reference in this memorandum to a unit plan, which Mr. Levis thought he could ultimately follow the acquisition of Whitall-Tatum patents, as well as some understanding with Lynch and Miller Mold Works; and he made four suggestions, as per the enclosed memorandum. Did you have anything to do with that?

A. Nothing.

Q. Did you see the memorandum at the time?

A. I have no recollection of it.

Q. When you say you had nothing to do with this unit plan, you mean you did not read it when it came in and did not participate in it at all?

A. I don't know what the unit plan was at all. I never heard of it. I may have. I have no recollection of it.

Q. Were you not consulted by your fellow directors at Hartford with regard to the proposed arrangements made with Lynch in 1933?

A. I don't know. I was consulted now and then by the Hartford directors. Very much of their business was transacted without consulting me.

Q. You knew, did you not, they had an option on the Whitall-Tatum applications?

[fol. 3304] A. Yes, I knew about that. That is one of the things I knew about.

(Morning recess.)

The Court: Proceed.

Q. Mr. Falck, you said during the recess you wanted to correct a statement which you made inadvertently.

A. It occurred to me that I said at a meeting in New York in 1932 when Mr. McNash was there, that perhaps both Mr. F. Goodwin Smith and Mr. Knox Smith were present. My recollection is not distinct as to who was there; but Mr.

Knox Smith, of course was not; he had died in the previous December.

Q. Do you remember anything else about conversations at which Mr. McNash was present prior to July 19 and 20, 1932?

A. That was the only conference at which I was present, when those contracts were discussed.

Q. Just before recess you were testifying with regard to any knowledge you had in respect to Whitall-Tatum application. You said you knew there was an option?

A. Yes, sir.

Q. You knew that the option was finally exercised some time in September, 1933?

A. I knew it was exercised.

Q. Hartford paid $100,000 and Owens paid $100,000?

A. I think that is so.

Q. You knew during the option period that Hartford and Owens were participating in the option payments?

A. As it came to me, Mr. Smith, Hartford, had the option, [fol. 3305] had the option, as I undersood it; I don't think there was anything said about who would pay when it was taken up, if it was; but I suppose the general contract controlled.

Q. Were you advised by anybody of Hartford with regard to the rights purchased by Hartford from Lynch, feeder rights for which payment was made of about $120,000?

A. I have no recollection now; I may have been told at the time.

Q. In connection with the Lynch contract: You were familiar with the fact that there was a Lynch contract?

A. There was some kind of contract made with Lynch.

Q. Do you remember some time in 1938 the problem came up of modifying that contract to take away certain restrictions?

A. Yes, sir.

Q. And that you were consulted?

A. I think I was.

Mr. Isseks: Your Honor, at this time I should like to have marked a document which was furnished us by Corning pursuant to a recent subpoena which was issued. I don't believe Your Honor has a copy. It is dated October 5, 1938, produced by Corning. It has on top: "Mr. Saf-

ford". It has no signature except the initials: "S. F. P." indicating Mr. Parham; "Copies to Mr. Smith, Mr. Eldred, Mr. Safford, and Mr. Pease" at the end.

[fol. 3306] Q. There is handwriting in the upper left hand corner which I will ask you if you can identify?

A. That is my handwriting.

Q. It says: "Mr. Parham to Mr. Falck to Mr. Curtiss"?

A. That is right.

Q. You saw that, did you not, at the time?

A. I must have.

Q. Otherwise your handwriting would not be on there?

A. Yes, sir.

Mr. Isseks: Your Honor, I offer it in evidence.

Mr. Middleton: May we have an objection on account of the date? We have not seen the instrument or its contents.

The Court: You may have your objection. It will be admitted.

Thereupon, Government's Exhibit No. 709 was read to the Court by Mr. Kramer, of counsel for the government.

Q. Did you give your approval, sir, to the modification?

A. Yes, to the modification.

Mr. Isseks: Your Honor, at this time I refer to Government's Exhibit No. 340. Item C provides for the cancellation of Section 8. Government's Exhibit No. 340 is an amendment to the Hartford-Empire and Lynch Corporation agreement, and it itself is dated November 12. 1938. The last paragraph cancels Section 8 referred to in the memorandum by Mr. Parham.

Q. Mr. Falck, were you advised of the negotiations prior [fol. 3307] to October 1, 1935, which negotiations resulted in new agreements between Hartford and Owens, and Owens and Hazel-Atlas, and, to some extent, Hartford and Hazel-Atlas?

A. I don't know that I really was. I may have been told something about them.

Q. Were you not consulted about this payment of two and one-half million dollars by Hartford and Owens?

A. I probably was. I took the recommendations that those active men made, largely.

Q. Did you participate in the negotiations at all?

A. No, sir.

Q. Were you advised of the reasons for entering into the——

A. I presume I was.

Q. Do you recall what you were told?

A. No. I could think up probably.

Q. I do not want you to think up. I want you to remember.

A. No, sir.

Q. You do not remember anything?

A. I do not.

Q. Nothing I can do refreshes your recollection? Your mind is so blank on that subject?

A. No, I cannot recall any of the detail of it. I knew the contracts were to be amended.

Q. Were you advised from time to time by Mr. F. Goodwin Smith regarding Hartford-Empire's licensing policy for new licensees?

A. We talked about business frequently.

[fol. 3308] Q. You talked about the licensing policy of the company?

A. Yes, sir.

Q. What was the licensing policy of the company with regard to people not in the glass container business or glassware business,—newcomers, so-called?

A. There was not any hard and fast policy that he was bound to, so far as I know; but the actual policy was to license glass manufacturers, and not glass users who were not in the glass business.

Q. Was not the policy of the company, Hartford-Empire, not to license people that were not previously in the bottle industry?

A. If they were not glass manufacturers, it was the policy not to license them.

Q. In other words, it was the policy not to license somebody who came along with capital and wanted to go into the business?

A. Well, I think every case depended upon its own facts for decision.

Q. The Reed suit: suit had been brought against F. E. Reed probably some time in 1930, had it?

A. I don't know the date. I know it was brought, yes.

Q. The fact that Reed was not a licensee was something discussed between you and Mr. F. Goodwin Smith from time to time, was it not?

A. Once in a while, yes.

Mr. Isseks: Your Honor, at this time I offer Govern-
[fol. 3309] ment's exhibit No. 710, a letter dated October 17, 1933, addressed to Mr. Arthur F. Reed, Rochester; with a copy to Mr. Falck; signed by Mr. F. Goodwin Smith; stipulated as to genuineness by Hartford-Empire Company, at page 24 of the Stipulation.

The Court: It may be admitted.

Thereupon, Government's Exhibit No. 710 was read to the Court by Mr. Apsey, of counsel for the government.

Q. Did you receive a copy of that letter, sir?

A. I don't know. I presume so.

Q. Did you see Mr. Reed, as indicated in the letter, you and Mr. F. Goodwin Smith?

A. No. I never saw Mr. Reed.

Q. You did not?

A. No, sir.

Mr. Isseks: Your Honor, at this time, I offer Government's Exhibit No. 711, a letter dated November 2, 1933, addressed to the witness by Mr. F. Goodwin Smith; "Subject: F. E. Reed Glass Co." It is stipulated as to genuineness, at page 24 of the Stipulation.

The Court: It may be admitted.

Thereupon, Government's Exhibit No. 711 was read to the Court by Mr. Apsey, of counsel for the government.

Q. Did you receive that letter, sir?

A. I presume I did.

[fol. 3310] Q. Did you have any other conferences with Mr. F. Goodwin Smith with regard to the F. E. Reed Company?

A. I have no recollection of them. I would say over a period of years it was mentioned from time to time; that is all.

Q. At this time I show you Government's Exhibit No. 528. It is very indistinct. I will show you a copy. It is a memorandum dated September 26th, 1934, and which is headed: "Latest Reed Bulletin"; signed, "F. G. S.; a copy to Amory

Houghton;" and ask you whether the substance of that memorandum was brought to your attention?

A. I would not know. That sort of thing would not impress itself on anyone's mind.

Q. I show you Government's Exhibit No. 539, which is a memorandum addressed to you, dated June 18, 1937, from Mr. F. Goodwin Smith, and ask you whether or not the subject matter of that memorandum was brought to your attention? That document, by the way, comes from your files, the files of Corning?

A. I remember being told that Mr. Reed said he did not wish to sell his business. I don't know whether—that is—where I got the information.

Q. You were told, were you not, that efforts were made, at the suggestion of Mr. F. Goodwin Smith, to find out whether Mr. Reed would sell his business?

A. I don't know whether it was the suggestion of Mr. F. Goodwin Smith or not. I was told that there was some approach to Mr. Reed as to whether he would sell his busi-[fol. 3311] ness.

Q. Who made the approaches?

A. I think this Mr. Gwyer.

Q. These people were asked to do it at the suggestion of Mr. Smith, were they not?

A. I don't know.

Q. Has your company, if you know, been interested in the last three years in going into the general container field?

A. The Corning Glass Works?

Q. Has your company been interested in the last few years?

A. You mean the Corning Glass Works?

Q. Yes, the Corning Glass Works.

A. Not in any serious way I know of.

Q. You testified already that you are not familiar with the active operation of the business?

A. No; but I would be familiar with any project of that nature being seriously considered.

Mr. Isseks: Your Honor, at this time I should like to offer in evidence three documents which were furnished us by Corning pursuant to the last subpoena. One is dated April 15, 1939, on the stationery of Hartford-Empire, addressed to W. H. Curtiss, vice-president of the Corning

Glass Works; signed "Goodwin"; with the initials in the lower left hand corner "F. G. S."

I offer that in evidence as Exhibit No. 712.

Q. I ask you whether you can identify the signature of Mr. F. Goodwin Smith?

[fol. 3312] A. Yes, that is his signature.

The Court: It may be admitted.

Thereupon, Government's Exhibit No. 712 was read to the Court by Mr. Apsey, of counsel for the government.

Mr. Isseks: Your Honor, at this time I offer as Government's Exhibit No. 713, a letter on the stationery of the Hartford-Empire Company, by Mr. F. Goodwin Smith, President, dated April 21, 1939; addressed to Mr. Curtiss; and signed "Goodwin". This was furnished by Corning in the last few days.

Q. Mr. Falck, I ask you if that is Mr. Smith's signature?
A. It is.

The Court: It may be admitted.

Thereupon, Government's Exhibit No. 713 was read to the Court by Mr. Apsey, of counsel for the government.

[fol 3313] Mr. Isseks: Your Honor, at this time, I offer as Government's Exhibit 714 photostat of a letter dated December 1, 1939, addressed to Mr. Eldred, vice-president, Hartford-Empire, apparently signed by Mr. Curtiss. This copy was furnished to us in the last few days by counsel for Corning Glass Works pursuant to a subpoena.

The Court: Who is W. H. C.?

Mr. Isseks: That was the gentleman that was addressed before as Hanford—W. H. Curtiss.

Mr. Middleton: Your Honor, we have not seen copies of these documents. We don't know their contents but we wish to again register our objection on the same grounds as previously.

The Court: Very well. Exhibit 714 may be admitted.

Thereupon, Government's Exhibit No. 714 was read to the Court by Mr. Apsey, of counsel for the government.

Mr. Falck, do you say your company was not interested in going into the general container field in 1938?

A. I said if they were seriously interested I was not advised of it, as I recall, and I therefore doubt if they were seriously interested.

Mr. Isseks: This time I will mark a document—I had intended to use it with another witness later on—it is dated April 22, 1938. It is on the stationery of the Libbey Glass Company, intra-correspondence, addressed to Mr. C. B. [fol. 3314] Belknap, Owens-Illinois Company, signed J. H. Wright, stipulated as to genuineness by Owens-Illinois at Page 27 of the Stipulation. It is about the third document from the back in Your Honor's book. I offer this in evidence as Government's Exhibit 715, and then I will see if I can refresh the witness's recollection.

Mr. Middleton: Your Honor, could the ruling on that be deferred for just a moment?

The Court: Yes. I haven't seen it myself.

Mr. Isseks: You might want to look at a copy, too, Mr. Falck.

(Handing a copy of Exhibit 715 to the witness.)

The Court: Is it stipulated by Owens-Illinois?

Mr. Isseks: Yes, Your Honor, stipulated as genuine by Owens-Illinois at Page 27 of the Stipulation.

The Court: It may be admitted.

Mr. Sayles: I ask it be limited as to the hearsay part as far as Corning or Empire is concerned.

Mr. Isseks: I agree.

Mr. Sayles: It may not be binding on them.

The Court: Very well.

Mr. Isseks: I agree, Your Honor, limited purpose.

The Court: Very well.

Mr. Isseks: I think Mr. Middleton asked us to wait.

[fol. 3315] Mr. Middleton: I have no special objection except it is entirely irrelevant to the issues in this case.

The Court: It may be admitted.

Thereupon, Government's Exhibit No. 715 was read to the Court by Mr. Apsey, of counsel for the government.

Q. You read that, Mr. Falck, did you not?

A. Yes.

Q. Does that refresh your recollection in 1938 your company was considering going into the general container field?

A. No, I don't think it was.

Q. You think the gentleman here was misinformed?

A. Yes, I don't know who he was.

Q. The reference here to the next meeting——

A. For thirty years we talked about it every once in a while. I say I don't think there was any serious consideration of it.

Q. You are not in the general container field?

A. No.

Q. And you haven't gone in the general container field?

A. No.

Q. There is a reference here to a meeting—at the next meeting—did the Owens people and Corning people meet from time to time?

A. I suppose they do. I don't know who Mr. Wright is.

Q. You know Mr. Belknap though?

A. Oh, yes.

[fol. 3316] Q. I am interesting in finding out this stock set-up today: 41 per cent of the stock of the Hartford-Empire was distributed by Empire Machine Company in December, 1940. Who owns that stock, the thirteen stockholders you mentioned; is that what you said?

A. I said I thought there was about thirteen because the original number has been increased by reason of deaths and trusts being created.

Q. Who are those original thirteen stockholders, if you remember them?

A. Taking the original list, Mr. Alanson Houghton, the Estate of Arthur A. Houghton, deceased, including some trusts created under his Will, only in different lots, his original holding. Dr. Arthur L. Day is a stockholder. The Estate of William Sinclair, the Estate of Charles E. Githler, and/or some trustees holding parts of his estate. I think that is all except the stock that I hold and three trusts that I created.

Q. Those are all the stockholders of the Empire Machine that acquired the 41 per cent of stock of Hartford. Did you mention Amory Houghton too?

A. I don't think he is a stockholder in his own right. He is a trustee.

Q. He is trustee of some of these trusts?

A. Yes.

Q. That stock was divided—how much was it, how much did Empire Machine own, and Hartford?

[fol. 3317] A. It owned what it had from the beginning, I think 40 and a fraction per cent.

Q. The directors of Hartford that are in any way connected with Corning today are the three Houghtons and you, is that right?

A. That is right.

Mr. Isseks: No further questions.

Cross-examination by Mr. Sayles:

Q. Mr. Falck, yesterday counsel for the government asked you with reference to the negotiations between Owens and Hartford-Empire and showed you this Exhibit 679, which I show you a copy, and ask you whether that notified you that new negotiations were started just ahead of the date of that letter which was November 5, 1921?

A. This letter advised me that Mr. Ashcraft is engaged or is trying to start negotiations between Hartford and Owens.

Q. Mr. Ashcraft was not a member of Owens' organization?

A. I understand that he was not, no.

Q. Now, with reference to that date I would like to ask you when the Empire negotiations with Hartford-Fairmont first started?

A. It started in the spring, or around early summer of 1919.

Q. What were the first negotiations that you knew of between Owens and Hartford—when were they?

A. I was advised in October, 1919, that Hartford and [fol. 3318] Owens were in some sort of negotiation, and a little later, that is a very short time later, that the negotiation contemplated or there had been raised the question whether Hartford would sell to Owens.

Q. That was as you understood it?

A. That was the October, 1919, negotiation.

Q. At that time was Mr. Dorsey doing some work for Hartford-Fairmont?

A. Yes, Mr. Dorsey, with the assent of the Empire Company, assisted or associated himself with Mr. Honiss, who represented Hartford in the interference proceedings in which Hartford and Empire were both interested, and Mr. Dorsey withdrew from that assistance immediately upon

learning in October that such a negotiation was under way between Hartford and Owens.

Q. Then did he go back into those negotiations, I mean go into this work for Hartford-Fairmont?

A. I was notified by Mr. Goodwin Smith,—this was all in the month of October,—that the negotiations had deadlocked and had come to an end, and I was also notified on the—I would say in the same week—at the same time about by Mr. Honiss with the request that I authorize Mr. Dorsey to resume his cooperation, which was done.

Q. Were there any negotiations between Owens and Hartford-Fairmont that you know of until the negotiations were first started and were mentioned in that letter of November 5, 1921?

[fol. 3319] A. There were no other negotiations of which I knew between October, 1919, and November, 1921.

Q. Now, after you were notified in October, 1919, that the negotiations between Owens and Hartford-Fairmont had terminated, what took place with reference to the Empire-Hartford-Fairmont negotiations?

A. I was told by Mr. Goodwin Smith after this Hartford-Owens negotiation terminated a little more about them. That is that Hartford had offered to sell for two and one-half million and Owens had offered to pay two million, it was about as Mr. Smith told it to me, and that the negotiations were ended. We then actively took up the program that had been tentatively discussed for a consolidation of the Hartford-Fairmont Company and the Empire Machine Company, and through the winter and spring of 1920 we spent a great deal of time on it.

Q. I show you Government's Exhibit 676, or a copy really, not an exact copy because there has been a new substitute, or the original has been substituted—maybe I better get the exhibit, 676.

Mr. Isseks: Here it is.

(Handing the exhibit to counsel.)

Q. I will ask you if you sent that letter?

A. I did.

Q. To Mr. Smith?

A. Yes.

Q. In that letter you had outlined in general a contract [fol. 3320] and you wrote to Mr. Smith. On page 3 of the

letter to the effect, "That we have come to the conclusion that we will accept the tentative proposal made by you and your associates that the Empire Company interests take 45 per cent, and the Hartford-Fairmont interests 55 per cent of the stock in the new company, and that the general set-up be made along the lines of the last memorandum which we have under consideration". And some place in this letter, you stated on page 4 at the beginning of the last paragraph, "If this program is accepted by you and your associates we can consider the matter closed in principle". That is true, is it, Mr. Falck?

A. That is true. I wrote that letter making those statements. We had reached that stage, and this letter called for a decision by Hartford as to whether they wished to go along on the basis that I here stated.

Mr. Sayles: I would like to offer in evidence and with Your Honor's permission read into the record a bit of the minutes of the Executive Committee of Hartford-Fairmont held on July 8th, 1920, at the Hotel Belmont in New York City.

Mr. Isseks: This is the same thing that was done before. Is that the one Mr. Wall put in?

Mr. Wall: No. I read from the minutes in April and some in November, but not the meeting of July 8th.

[fol. 3321] The Court: It may be done.

Mr. Sayles: This is a meeting of the Executive Committee of the Hartford-Fairmont Company held July 8th, 1920, and part of them read as follows:

"(9) It was voted to advise Mr. Falck, President of the Empire Company, that the Executive Committee would recommend to its directors and stockholders the merger of the Hartford-Fairmont Company and the Empire Machine Company on a general basis as covered by chart submitted by Ernest Walker Smith. The merger scheme called for a proportion of Hartford-Fairmont 55 per cent, and Empire 45 per cent."

Q. Were you notified to that effect by Mr. Smith, Mr. Falck?

A. I was.

Q. After that how did you proceed?

A. We proceeded from that time on on the basis of an agreement which had been reached between the executives

after much discussion and consideration in principle, and specifically as to the stockholding that we should have in the new machine company, and in substance the agreements as they were signed in 1922 were made at that time in 1920.

Q. Did you agree and did you advance money to the Hartford-Fairmont Company towards this merger?

A. Yes. Hartford-Fairmont lacked working capital and [fol. 3322] we agreed, having come together to the extent which we had, we would in anticipation of the formation of the new company and the issuance of stock, we would advance money, 45 per cent of what might be needed for some period of time, I think for the coming year, contemplating that we would take preferred stock of the new company when formed for those notes, and we made the agreement and we did advance money throughout the year 1921 in various amounts.

Mr. Sayles: May I have this marked for identification Exhibit C-5048?

The Court: I think you may suspend at that point. The bailiff may recess court until two o'clock this afternoon.

(Noon adjournment.)

[fol. 3323] (At 2 o'clock p. m., Tuesday, April 8, 1941, the hearing was resumed.)

The Court: You may proceed.

Mr. Sayles: I produced the original of some exhibit referred to this morning. I don't know whether Mr. Isseks wants to show that to the Court now. (Referring to Government's Exhibit 708.)

Mr. Isseks: Counsel has produced the original. The original has in the upper left-hand corner, "AH" and it has the stamp, "Received July 5, 1933, Executive Department, AH", and there is no doubt that the "By C. D. Belknap" was put on the original after the document itself was received, because the document itself is a carbon copy, and the typewritten copy is what is better known as the ribbon copy. This is the one from which the photostat was made.

The Court: That doesn't help very much.

Mr. Isseks: I would like to ask the witness one question, whether the stamp is the executive stamp of Mr. Houghton, Amory Houghton?

The Witness: Yes.
Mr. Isseks: I am sorry to interrupt.

Further Cross-Examination.

By Mr. Sayles:

Q. Now, Mr. Falck, I show you this Exhibit C-5048, and ask you what that is.
A. That is my office copy of letter written by me to F. Goodwin Smith, November 15, 1920.

Mr. Sayles: I offer it in evidence.
[fol. 3324] Mr. Isseks: No objection.
The Court: It may be admitted.
Mr. Sayles: I am only interested in two paragraphs of it, anybody else can have the rest of it read. I will read that:

"5. The funds of the H-F being insufficient for working capital for the prosecution of the restricted program, and it having been agreed in general that the H-F and Empire groups will contribute the required fund, such contribution to be made to H-F without waiting for the formation of H-E, for the time being moneys will be contributed upon notes of H-F which shall bear interest at the rate of 6% per annum. The notes shall be given in the sum of $100 or multiples thereof for each $85 or multiples of said sum advanced by the individuals or groups."

And another paragraph:

"The maximum amount of funds to be called for by H-F and Empire groups in the respective proportions of 55% and 45%, and the times when said funds may be called for and shall be furnished, are December 1 to 10, 1920, $65,000; January 1 to 10, 1921, $45,000; February 1 to 10, 1921, $90,000; March 1 to 10, 1921, $90,000; April 1 to 10, 1921, $30,000; May 1 to 10, 1921, $80,000. The foregoing figures represent the maximum amount of notes which may be [fol. 3325] issued. The "funds to be advanced thereon being 85% of the amount of the note, or a total in six months of $340,000."

The Court: Is that letter addressed to Mr. Goodwin Smith?

Mr. Sayles: Yes, sir. Does Your Honor want to see it?

The Court: No, that is all right.

Mr. Isseks: I am looking at it to see if there is anything I want to read. I didn't want to interrupt counsel.

Q. Now, Mr. Falck, did you actually,—when I say "you" I mean the Empire group—advance this money to the Hartford-Fairmont Company?

A. We did advance money in accordance with that agreement, not strictly on those dates or in those amounts, but as requested by Hartford-Fairmont through the following year.

Q. Did you put on a memorandum that you have with you, when and in what amount the Empire group advanced the Hartford-Fairmont?

A. Yes, I have a memorandum made from our records.

Mr. Isseks: I would like to know whether contemporaneous memorandum or something prepared now.

Mr. Sayles: Just now; last night.

The Witness: The memorandum prepared last evening from the files we had with us in Toledo.

Mr. Sayles: Late last night, too.

Q. Will you give it?

A. The first advance under this arrangement was made [fol. 3326] by the Empire group on February 21, 1921, $32,512; the second was made in April, in the amount of $42,840; the third was in the amount of $32,130, the records available didn't give the date; the fourth was in July, the amount of $30,600; the fifth and last advance in 1921 was December 13, in the sum of $20,000; making a total advance by the Empire group of $158,082, which is slightly over 45% of $340,000.

Q. Now, Mr. Falck, this Government's Exhibit 679, Mr. Dorsey to you, which you saw this morning, and that tells about the new negotiations being started up along about November 5, 1920——

A. 1921.

*A.* Yes, November 5, 1921. Now, what was the nature, the general nature of the proposals made during that negotiation?

A. I was advised by Mr. Goodwin Smith,—I never was present at any Hartford-Owens negotiations,—in '21 I was advised by Mr. Smith that the proposal being considered

was for the formation of a holding company, Hartford's assets to be transferred to it, some assets, I don't know now what, of Owens, and the stock to be held 50-50 by Hartford-Fairmont and Owens. That was in 1922, or after November, 1921.

Q. Now, there appears, Mr. Falck, in the record, at page 251, reference to a meeting held at the Dauntless Club on May 15, 1922, the following, Mr. Wall quoted from the minutes:

"The Owens matter was then taken up and their offer [fol. 3327] of May 11th was submitted and flatly rejected. The general feeling was any contribution for H-F should be based on net income and not gross income."

Now, was it your understanding that in that meeting at the Dauntless Club on May 15, 1922, that this second negotiation was terminated?

A. It was, but the holding company plan had terminated earlier in the year, and then from that they went on into discussing a contract, not a holding company but a contract, and the proposal or statement that was considered and rejected at the Dauntless Club meeting, I think, was of another type, not the holding company, but that proposal considered at that time was rejected and so far as my knowledge went at the time or since, that was the end of the negotiations in that year.

Q. Did you go abroad in the year 1922?

A. Yes, in June.

Q. And during 1922 will you state whether or not the corporation, the Hartford-Empire Company, was actually organized?

A. Yes, within a month after that Dauntless Club meeting the actual incorporation of the Hartford-Empire Company was completed, just before I went to Europe.

Q. I show you Government's Exhibit 16 and ask you from that whether or not you can tell about when that was—or you have already testified, though, it was just before you went abroad?

A. Some time between the middle of May and the 24th of June.

Q. And during that summer was the formation agree- [fol. 3328] ment, part of Government's Exhibit 16, acknowledged by the parties to the contract?

A. Yes, the formation agreement was acknowledged by a considerable number of people, all of the stockholders of both companies, from that date, from early July to the 6th day of October.

Q. Now, Mr. Falck, in the record of yesterday's proceedings, I find the following on page 2035,—you were on the stand being questioned by Mr. Isseks: "Q. You remember at first you said both sides, the Hartford group and Empire group, should have nothing to do with it as indicated in Item 1?" and your answer was: "Yes, I presume". That is referring to Exhibit 271. Now, does that correctly state your feeling at the time the Monogah stock was sold? This question was asked you with reference to the Monongah stock, and I show you copy of Government's Exhibit 271, and ask you whether that answer is correct?

A. My answer is yes, it is not correct as to counsel's question. It is correct as to Item 1 which he said was what he was stating.

Q. Well, in other words, if I may divide this question, if he asked you, Do you remember at first you said both sides, the Hartford group and the Empire group, should have nothing to do with it?—what would your answer be?

A. The answer is, no.

Q. If you were asked this question, Do you remember it was as set out in Item 1 of that Exhibit 271, what would your answer have been?

[fol. 3329] A. My answer was yes. I was thinking of the item when I answered the question, rather than of the question.

Q. Will you read, Mr. Falck, that Item 1, so that it may be clear at this time in the minutes what Item 1 said?

A. (Reading): "1. If the Hartford group would waive all rights to purchase the Monongah stock the Empire group would do likewise."

Q. And you answered that that was your position at the time?

A. Yes.

Q. And you answered me that was your position at the time?

A. Yes.

Q. Now, did you last night go through the files with reference to this Monongah stock and find a letter stating your position on this stock at that time?

A. Yes. I wanted to see what I had told Mr. Smith my position was.

Mr. Sayles: I am going to ask this letter be marked for identification C-5049.

(So marked.)

Q. I show you Exhibit C-5049 and ask you if you will look at it and state whether or not that is the letter which you say states your position at that time?

A. That is the office copy of the letter I wrote Mr. Smith.

Q. And you wrote that letter to Mr. Goodwin Smith on what date?

A. I presume on the date that it bears, June 30, 1927.

[fol. 3330] Mr. Sayles: I will offer that in evidence.

Mr. Isseks: I haven't seen it, Your Honor.

Mr. Sayles: If it will simplify it, I don't care anything about the letter after, I think, the first nine points, or something like that.

Mr. Isseks: (After examining same.) No objection, Your Honor.

The Court: It may be admitted.

(Exhibit C-5049 read, down to ninth point.)

Mr. Sayles: The rest of it is on another matter.

Q. Now, in reference to this Monongah stock, I will ask you a couple of questions to bring it back to the Court's memory, I don't know whether the Court remembers about it. That was the stock in Hartford-Empire Company that was owned by the Monongah Glass Company, or whatever the name of it is?

A. That is so.

Q. Which last company got into difficulties and the stock had to be sold, is that right?

A. That is so.

Q. And there was in existence a preemption agreement which was made at the same time as the formation agreement?

A. Correct.

Q. And that preemption agreement gave to the Hartford group in this case a right to take all of that stock since the

Monongah group was in the Hartford group? Maybe I don't state that right.

A. That is so; defining the Hartford group as the group of original Hartford-Fairmont stockholders, who took 55%, [fol. 3331] among them, of the Hartford-Empire stock; and in the event of sale of any of that stock the others in the group had first right to buy it.

Q. Then when you were told about this stock to be issued—or to be sold, rather,—not issued, but to be sold,—the question came up whether or not you should take it, some of your group?

A. That is right.

Q. And under the preemption agreement, did you receive an offer of sale, copy of an offer of sale, and a notice from Herbert Knox Smith as the transfer agent, with reference to that stock?

A. Yes.

Q. I show you Exhibit C-5050, and ask you if that is a copy of the notice of sale or offer of sale, which you received with reference to this Hartford-Empire stock that had been owned by the Monongah Company?

A. Yes, it is. I testified yesterday from my recollection that I thought there was a price of $42 or some such price offered, but we never actually received a notice that there was a bona fide offer of that price. This is the first and only official notice we received.

Mr. Sayles: I offer this offer of sale in evidence,—C-5050.

Mr. Isseks: No objection.

Mr. Sayles: There is no date on it.

Q. I show you Exhibit C-5051, and ask you if that is a letter of transmittal from Herbert Knox Smith as trans- [fol. 3332] fer agent?

A. To me.

Q. What is the date of that letter?

A. November 25, 1927.

Q. And you were at that time the representative of the Empire interests, is that right?

A. Designated for this purpose as their representative.

Q. That is what I mean.

A. Yes, sir.

Mr. Sayles: I will now offer that in evidence.
Mr. Isseks: No objection.
The Court: They may both be admitted.

Q. Now, did any of the Empire group buy any of this stock?
A. No.
Q. And did they waive their rights about it?
A. Yes.
Q. I show you Exhibit C-5052 for identification, and ask you if you sent that wire to Mr. Herbert Knox Smith on December 20, 1927?
A. Yes.

Mr. Sayles: I offer it in evidence.
The Court: It may be admitted.

(Read by Mr. Sayles.)

Q. Now, Mr. Falck, as you testified before, this stock was owned by the Monongah Company?
A. Yes, it was Monongah stock.
Q. And it was stock in the Hartford-Empire Company?
A. Yes.
[fol. 3333] Q. The Hartford-Empire Corporation had nothing to do with the sale of this stock, did it?
A. No, it had no control or anything to say about it.
Q. The price at which the stock was sold was determined by somebody representing the Monongah people, or the owners of the Monongah Company at that time; is that your understanding?
A. That is my understanding. It must have been so.
Q. And the highest offer, firm offer, and the only offer that you know about, except some talk about acquiring it for $42 a share, was this offer contained in the exhibit which has just been introduced?
A. That is correct.
Q. Through the record, Mr. Falck, once in a while, there appears the description of the Canfield machine, and in other places in the record there is a description of an "F" machine. Will you state whether or not they refer to the same thing?
A. They do. The type "F" machine was the name, was the designation commonly employed by the Empire Company and by Corning. Canfield, the inventor, went to Hart-

Monongah group was in the Hartford group? Maybe I don't state that right.

A. That is so; defining the Hartford group as the group of original Hartford-Fairmont stockholders, who took 55%, [fol. 3331] among them, of the Hartford-Empire stock; and in the event of sale of any of that stock the others in the group had first right to buy it.

Q. Then when you were told about this stock to be issued—or to be sold, rather,—not issued, but to be sold,—the question came up whether or not you should take it, some of your group?

A. That is right.

Q. And under the preemption agreement, did you receive an offer of sale, copy of an offer of sale, and a notice from Herbert Knox Smith as the transfer agent, with reference to that stock?

A. Yes.

Q. I show you Exhibit C-5050, and ask you if that is a copy of the notice of sale or offer of sale, which you received with reference to this Hartford-Empire stock that had been owned by the Monongah Company?

A. Yes, it is. I testified yesterday from my recollection that I thought there was a price of $42 or some such price offered, but we never actually received a notice that there was a bona fide offer of that price. This is the first and only official notice we received.

Mr. Sayles: I offer this offer of sale in evidence,—C-5050.

Mr. Isseks: No objection.

Mr. Sayles: There is no date on it.

Q. I show you Exhibit C-5051, and ask you if that is a letter of transmittal from Herbert Knox Smith as trans- [fol. 3332] fer agent?

A. To me.

Q. What is the date of that letter?

A. November 25, 1927.

Q. And you were at that time the representative of the Empire interests, is that right?

A. Designated for this purpose as their representative.

Q. That is what I mean.

A. Yes, sir.

Mr. Sayles: I will now offer that in evidence.
Mr. Isseks: No objection.
The Court: They may both be admitted.

Q. Now, did any of the Empire group buy any of this stock?
A. No.
Q. And did they waive their rights about it?
A. Yes.
Q. I show you Exhibit C-5052 for identification, and ask you if you sent that wire to Mr. Herbert Knox Smith on December 20, 1927?
A. Yes.

Mr. Sayles: I offer it in evidence.
The Court: It may be admitted.

(Read by Mr. Sayles.)

Q. Now, Mr. Falck, as you testified before, this stock was owned by the Monongah Company?
A. Yes, it was Monongah stock.
Q. And it was stock in the Hartford-Empire Company?
A. Yes.
[fol. 3333] Q. The Hartford-Empire Corporation had nothing to do with the sale of this stock, did it?
A. No, it had no control or anything to say about it.
Q. The price at which the stock was sold was determined by somebody representing the Monongah people, or the owners of the Monongah Company at that time; is that your understanding?
A. That is my understanding. It must have been so.
Q. And the highest offer, firm offer, and the only offer that you know about, except some talk about acquiring it for $42 a share, was this offer contained in the exhibit which has just been introduced?
A. That is correct.
Q. Through the record, Mr. Falck, once in a while, there appears the description of the Canfield machine, and in other places in the record there is a description of an "F" machine. Will you state whether or not they refer to the same thing?
A. They do. The type "F" machine was the name, was the designation commonly employed by the Empire Company and by Corning. Canfield, the inventor, went to Hart-

ford and joined its organization after the Hartford-Empire organization was formed, and the Hartford group came to commonly speak of that machine as the Canfield machine; but they are one and the same.

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[fol. 3334] Redirect examination.

By Mr. Isseks:

Q. I direct your attention to the paragraphs I read in Corning's Exhibit 5048. Doesn't that refresh your recollection whether or not the plan of organizing Hartford-Empire would go through, was still a matter of uncertainty?

A. We were putting up $160,000 to a company that was weak financially, and we naturally provided for all the contingencies we could think of.

Q. In other words, there was always a likelihood it would not go through?

A. No, there wasn't a likelihood it wouldn't go through. There was a possibility.

Q. Now, you testified, I believe, on examination by your counsel that this $42 a share was something you just heard of, just a casual thing?

A. I say $42 a share was named by the Smiths to me as a price that had been offered but it was never stated to us [fol. 3335] in a formal way as a firm offer which Monongah had received.

Q. And the Smiths weren't in the habit of telling you things that weren't true?

A. Well, that is not the inference from what I say. They had to have a firm, binding offer, before they could operate under the preemption agreement; but they might have had, and evidently did have, somebody discussing the thing and the paying of that amount, discussing it with Monongah.

Q. $42?

A. Yes.

Q. Didn't they also tell you as early as April, 1927, that Mr. Hartley of Turner said he had a firm offer from bankers of $50 for this very stock?

A. I don't know. They may have but they never had a firm offer.

Q. I show you Government's Exhibit 270, to which objection has been sustained, namely, diary entry of April 12,

1927, of Herbert Knox Smith, and see if that doesn't refresh your recollection?

A. No, that won't refresh my recollection.

Q. Without looking at it?

A. How could it?

Q. It might very well. A telephone book might refresh your recollection. I ask you to look at it. You didn't even look at it, and you said it didn't refresh your recollection.

[fol. 3336] A. (After examining same.) Well, this is the same statement you made.

Q. You couldn't even tell without looking at it.

A. It wasn't directed to me.

Q. But these gentlemen were the executive heads of the company in which you had a 45% stock interest?

A. No, but we never received notice of the $50 offer.

Q. I don't say you did. I am merely trying to refresh your recollection. These people weren't negotiating with Monongah?

A. They weren't negotiating for the Monongah stock.

Q. They were talking to the Monongah people?

A. I guess they were.

Q. The Monongah people were selling but they were doing the talking?

A. I don't know.

Q. Weren't you told by Mr. Knox Smith and by Mr. Goodwin Smith of various conferences these gentlemen were having?

A. Yes, I was told they saw a Mr. Hartley and they saw Ohio bankers. I was told in a general way those things.

Q. They told you these bankers were talking about making a commitment of some kind?

A. They may have told me a $60 price, I don't know. They may have told me $50. I remember distinctly a $42 price being discussed.

Q. Do you remember Mr. Goodwin Smith and Mr. Knox Smith came to Elmira specifically to talk to you about this subject-matter?

[fol. 3337] A. Yes, they came.

Q. You remember that, don't you?

A. Well, I have had my recollection refreshed that took place.

Q. I didn't show you anything. Was it something your counsel showed you over night?

A. It was something I have seen in the file.

Q. I would like to see it. I have something, you say, without looking at it wouldn't refresh your recollection. I would like to see it.

Mr. Sayles: I object and ask that be stricken.

No question.

Q. If there is anything in your files I would like to see it.

A. I think I have seen something in our files to the effect they came to Elmira to talk to me.

Q. About the same subject-matter?

A. Yes.

Q. That thing you saw was either a memorandum or a letter somebody wrote?

A. I think so.

Mr. Isseks: I would appreciate seeing it.

The Court: It should be furnished if it is available.

Q. You saw it last night, didn't you?

A. Why, I am not sure whether I saw it last night or not. It has no statement in it of the discussion. I say I think I saw a letter or something of the sort making an appointment with me, or saying they had been to see me at [fol. 3338] Elmira.

Q. It was at that time they told you about this $42 offer?

A. I don't know whether it was at that time or whether it was in New York or Elmira, or where it was.

Q. Now, in this letter that you wrote, as to which your counsel only read the first nine full paragraphs, I would like to direct your attention to the last two paragraphs,—I am reading from Defendants' Exhibit C-5049, dated June 30, 1937, from the witness to F. Goodwin Smith—in which you say:

"In this situation the proposition certainly seems a fair one". (Counsel then read remaining paragraph of Exhibit C-5049.)

[fol. 3339] Q. Do not those two paragraphs refresh your recollection that it was suggested by Hartford that Hartford-Empire buy this stock?

A. Oh yes, it was.

Q. In other words, there were various possibilities that Hartford-Empire buy it; secondly, that Hartford and the Empire Machine buy it; and thirdly, the way it finally happened, that the Hartford-Empire group and associates took some, and some went to the so-called Ohio group?

A. Yes. It is all perfectly plain. There is no hocus-pocus about it.

Mr. Isseks: That is one of the issues in the case.

Q. Do you remember, after you got this notice of the right to subscribe, you had a conversation with Mr. Knox Smith as to whether you would take any?

A. I presume I did.

Q. I show you Government's Exhibit No. 701, which is written by Mr. Knox Smith, and purports to be a memorandum of conversation with you; and direct your attention to the first paragraph, and ask you whether it refreshes your recollection that on or about the date of the memorandum, which I believe is December 10, 1927,—it refers to a conference on December 7——

A. Yes, sir.

[fol. 3340] Q. And I ask you whether or not you had the conversation referred to by him in the memorandum?

A. Yes, I probably did on that date. At some time I had that conversation with him.

Mr. Isseks: No further questions.

Mr. Sayles: That is all.

The Court: Call the next witness.

Mr. Isseks: We call Mr. C. B. Belknap, Your Honor.

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Thereupon, the government called as a witness, C. B. BELKNAP, who, being duly sworn, testified:

Direct examination.

By Mr. Isseks:

Q. You have given the Clerk your name and address, have you not?

A. No; No. 3555 Ridgewood Road, Toledo, Ohio.

Q. Toledo, sir?

A. Ottawa Hills.

Q. With what company are you connected, sir?

A. The Owens-Illinois Glass Company.

Q. In what capacity?

A. Vice-chairman of the Board of Directors.

Q. How long have you been vice-chairman of the Board of Directors of the Owens-Illinois Glass Company?

A. For approximately two or three months.

Q. Prior to that time—which was around January 1, 1941, I suppose?

A. Yes, sir.

[fol. 3341] Q. What position did you hold at the Owens-Illinois Glass Company?

A. I was executive vice-president of the company from some time in 1935. Prior to that I was vice-president of the company. I became a director of the company also in 1935, and have been a director of the company ever since.

Q. When did you first become connected with the company, please?

A. I became an officer of the company in April, 1933. Prior to that time I had acted as their attorney in various capacities.

Q. April, 1933, was the first time you became an executive of the company?

A. Yes, sir.

Q. You were not an employe in any sense prior thereto, other than as a lawyer?

A. Other than I moved to Toledo in November, 1922, and two-thirds of my time was devoted to the Owens-Illinois Glass Company.

Q. You said 1922: you meant 1932?

A. I should have said 1932.

Q. In other words, in November, 1932, you came to Toledo, and devoted three-fourths of your time to the Owens-Illinois Glass Company?

A. Two-thirds.

Q. Excuse me. The other third you devoted——

[fol. 3342] A. To private practice.

Q. When you became an executive officer, April, 1933, did you devote all of your time to the Owens-Illinois Glass Company?

A. No, I still theoretically carried the one-third division, but most of my time was devoted actually to the company's business.

Q. Has the one-third theoretical division continued since then?

A. Yes, sir.

Q. Are you still a member of Whittemore & Belknap?

A. No, I severed my connection with them.

Q. In November, 1932?

A. Yes, sir.

Q. Have you had any private law practice since April, 1933?

Mr. Middleton: Your Honor, objection. It is a personal matter. I think the witness has answered. He said he has an arrangement to devote two-thirds of his time with Owens. That answers the question.

The Court: I think it is not necessary to go into this further.

Mr. Isseks: Your Honor, I am trying to find out whether he does any other business; if it becomes an issue on the matter of what he has done with the company or not with the company. I am not interested in the nature of the work. [fol. 3343] The Witness: I am perfectly willing to answer the question.

The Court: You may answer.

The Witness: I still continue to do some private practice for personal friends of mine, in matters I am personally interested in, separate from the company.

Q. Do you maintain an office, other than the office at the Owens-Illinois, the executive offices, since April, 1933?

A. I have, and still do.

Q. In Toledo?

A. Yes, sir.

Q. Prior to November, 1932, were you in any way connected with Owens-Illinois in any other capacity than as counsel?

A. Not that I recall.

Q. For how long a period prior to November, 1932, did you represent the Owens-Illinois Glass Company?

A. I think the first work I recall ever doing for the Owens-Illinois Glass Company was in connection with the Lott Interferences, beginning May 10, 1919.

Q. From 1919 until November, 1932, you represented Owens-Illinois in connection with various matters as a lawyer?

A. Yes, I was a junior member of the law firm during those early years, as their patent counsel.

Mr. Middleton: May I ask to have the answer to that?

(Answer read.)

[fol. 3344] Q. Back in 1919, the company's name was the Owens Bottle Company, was it not?

A. Yes, sir.

Q. You know sufficient about the corporate organization of the company to know it has been the same company since except for a change of the corporate name?

A. I think they have retained the same charter, as far as I know.

Q. So that when I talk about Owens-Illinois and Owens, I am talking about the same company, from 1919 to date?

A. It is the same company legally; I would say it is an entirely different management.

Q. I am talking about the corporate entity; as far as you know, as a lawyer, it is the same corporate entity?

A. So far as I know.

Q. It may have more assets and a different management, but it is the same company?

A. That I would know only by hearsay.

Q. I want your understanding as a lawyer?

A. That is my understanding.

Mr. Williams: If Your Honor please, it is the same corporation since 1907, under three different names: first, The Owens Bottle Machine Company; then, The Owens Bottle Company; and then, the Owens-Illinois Glass Company.

Mr. Isseks: That is what I understood. I was trying to save time, instead of changing names every few minutes.

[fol. 3345] Q. I understand that from 1919 to 1932, you acted for Owens in the capacity of a lawyer: is that not right?

A. Yes, sir.

Q. Did you represent any of the other defendants in this case, other than Owens? You know who the defendants are, do you not?

A. Yes. I don't think that I represented any of the others. I may have done some work for Hartford-Empire, in substitution for my brother, when he was ill, or some-

thing; but I have no recollection of specifically representing them myself.

Q. You mention your brother: your brother is W. J. Belknap?

A. Yes, sir.

Q. A partner in the same firm in which you were a partner?

A. Yes, sir.

Q. Did your brother represent the Owens Company at any time?

A. Yes, he represented them as an associate of Mr. James Whittemore, head of the firm, for several years.

Q. Until when?

A. I could not give you the exact date; but I would assume that it was some time around the time I came to Toledo.

Q. In 1932?

A. Yes, sir.

Q. So that up until the Fall of 1932, your brother from time to time represented the Owens Company?

A. Yes. I think he represented at various times numerous glass companies.

[fol. 3346] Q. Has he represented the Owens Company since you have been connected with it?

A. He may have given some opinions. I think we have gotten opinions from him at various times, and I think we have probably had him do some detail work of some kind.

Q. Except for the isolated instances which you said might have taken place but you were not sure, for Hartford-Empire, have you ever represented Hartford-Empire, that you remember?

A. Other than those isolated instances.

Q. You are not clear about that?

A. No, I could not tell you exactly what dates it was. I may have done some work for them.

Q. You said you might have represented them when your brother was ill?

A. Yes, in some situation of that kind when he could not handle the work. I might make a fuller explanation of it, if you care for me to make it.

Q. Anything you want to say.

A. Mr. James Whittemore, who founded our firm, was the original attorney for Mr. Owens in connection with the Owens Bottle Company. He represented also the Libbey-

Owens interest. After I came back from the Army, in 1919, he decided to retire, and I took over the Owens account generally; and W. J. took over generally the Libbey-Owens. Then when they got into the trial of some of the Hartford [fol. 3347] cases, W. J., as a practicing lawyer, took an active part as a lawyer for Hartford; but I have no recollection of acting for them, other than spasmodically.

Q. Is there anything else you want to say, sir?

A. No, sir.

Q. Mr. Belknap, when you first became associated with Owens, in the Fall of 1932, two-thirds of your time, what was the nature of your duties?

A. I was a patent attorney primarily, although I did some other legal work outside of patent work.

Q. For Owens?

A. For Owens.

Q. After you became vice-president, in April, 1933, I think you said, what was the nature of your duties?

A. I became in charge of the legal and patent matters of the company, but undertook a lot of other duties of various kinds.

Q. Those were your duties, were they not, until January 1, 1941?

A. Yes, it has been a little of everything.

Q. Have your duties changed since January 1, 1941?

A. Yes, in January, 1941, Mr. Levis and myself, because of pressure on all executives in connection with the present situation, decided to separate the long distance planning of the company from the ordinary daily routine of operating the company. He became chairman of the Board. I became vice-chairman.

[fol. 3348] Q. You still are in charge of legal work, plus other duties?

A. Not directly; only in connection with the long distance planning.

Q. Do you remember your first participation in connection with the negotiations leading up to the April 9, 1924, Hartford-Owens contract?

A. Very clearly.

Q. Whom did you have your negotiations with?

A. I think that the first person I talked with in connection with the negotiations was Mr. Dorsey.

Q. He was representing whom?

A. Hartford-Empire Company, as far as I knew.

Q. You were representing the Owens people?

A. Yes, sir.

Q. He was a patent lawyer, and you were a patent lawyer?

A. Yes. I might say these original letters in connection with the negotiations are my own ideas. I was not employed by the company as a negotiator. I was employed in contesting certain interferences.

Q. But you thought of the idea of the negotiations?

A. I remember very distinctly why I did.

Q. You reported back to your people, did you not?

A. No. I started out, as I told you, when I returned from the Army in the spring of 1919, with the Lott Interferences. After those interferences had been proceeding for a period of time which I would estimate about forty times as long [fol. 3349] as we had been going in this case here—we were starting on our fifth year of taking testimony, fighting motions, et cetera,—I decided that it was wrecking my personal practice, and also my home life. The clients had quit trying to settle; they had broken off all negotiations.

I figured that if I could advance some new theory of settlement, they might settle the case. The result was that I proposed they make some settlement on a temporary period of five years; and then, after that time, to arbitrate what their rights were in the matter.

Q. Of course you reported back to your principals, after you had started conversation with Mr. Dorsey?

A. Yes, I reported, I believe, to Mr. Carter.

Mr. Isseks: At this time, Your Honor, I should like to have marked as the next government exhibit a letter dated July 14, 1923, from the witness to Mr. Carter, stipulated as to genuineness by Owens-Illinois, page 4 of the stipulation.

The Clerk: Government's Exhibit No. 716.

Mr. Isseks: Does Your Honor admit it?

The Court: It may be admitted.

Thereupon, Government's Exhibit No. 716 was read to the Court by Mr. Apsey, of counsel for the government.

Q. You wrote that, did you not, Mr. Belknap?

A. I did.

[fol. 3350] Q. I show you Government's Exhibit No. 50, which is a letter dated June 25, 1923, written to Mr. Herbert Knox Smith, by Mr. Dorsey, in which Mr. Dorsey purports to set forth in great detail various statements made by you during the negotiations; and I ask you to read the document and tell us whether the statements that he says you made are substantially accurate.

The Court: I think at this point we may take a recess for twenty minutes, and the witness may read the document during the recess.

(Afternoon recess.)

The Court: Proceed.

Q. Mr. Belknap, have you read Government's Exhibit No. 50?

A. Yes, I read Exhibit 50.

Q. Do these statements which Mr. Dorsey makes regarding what you said conform to your recollection?

A. I could not say specifically that they do, Mr. Isseks. It has been a matter of some eighteen years since those negotiations, and there were all kinds of pros and cons discussed during the negotiations.

I recall in general the proposition that I made, namely, that we split the royalties for a period of five years; and then arbitrate after that time as to which patents were dominating. There was a terrific patent fight going on, both in the Patent Office and in the court; and I was trying to get some method of settling it; but I could not recall at this [fol. 3351] time all the specific details which Mr. Dorsey mentions.

Q. In general, it sets forth the position you took?

A. As I explained it in my previous answer, yes.

Q. Is there anything in there you disagree with? Perhaps I can help you out. On the second page, under Item No. 2, Mr. Dorsey says,—referring to you,——

"He stated that he had seen Mr. Owens and Mr. Blair; that both had turned down the proposition previously discussed between us:"——

do you remember that, sir?

A. I remember that we had discussed with them, and, whatever the proposition was, they had turned it down.

Q. Then he goes on to say that he, meaning you,

"succeeded, (as to Owens without great trouble, but with much labor as to Blair), in getting them to agree to a modification of that plan having the following features:——

(a) Patents in the 'licensed fields' (for which see the last discussion) owned by Owens and H. E. to be pooled."

Do you remember that, sir?

A. I remember we discussed the cross license between the two companies.

Q. And then he says:

"(b) For five years H. E. to pay Owens fifty per cent of royalties received from licensed field."

[fol. 3352] Do you remember that?

A. That is correct.

Q. And, "(c) After five years Owens and H. E. to share in returns from licensed field in accordance with their respective contributions to condition then existing as such contributions might be determined by arbitrators."

Do you remember that, sir?

A. Yes, sir.

Q. "(d) Owens to pay on a basis of full royalty of all uses of any invention in the licensed field (that is to say, even if it came from them)."

Do you remember that, sir?

A. I remember the first part of it; I don't remember the part in parentheses.

Q. And then,

"3. Belknap told me that this embodied in principal the best terms for us he could get from his people and begged me to give it careful consideration before turning it down, because he, Belknap, believed that in spite of what we would be called upon to pay, the scheme would result in such a monopoly that we would get our money back many times."

Do you remember that, sir?

A. I don't remember that; but if I was speaking of a [fol. 3353] monopoly, I undoubtedly was speaking of a patent monopoly.

Q. You do not deny what he says there you stated?

A. I cannot deny or affirm it, because I have no recollection.

Q. I direct your attention to the fifth page, the paragraph numbered 7:

"It was understood between Belknap and myself, as the purpose had in view was to establish a monopoly as soon as possible, that Owens should pursue Federal and one or more Miller licensees with vigor (we bearing half of the expense under 5b), with the expectation that Federal would sell out if given the right to (say) one-third of their present income and that Miller would, for a small cash consideration, abandon his licensees by withdrawing from the interferences, leaving them to be settled between H. E. and Owens."

Do you remember that matter being discussed between you two gentlemen?

A. I don't remember it specifically; I remember discussing the fact that there were other people involved in these interferences who would have to be gotten out of the way.

Q. If necessary, by purchase?

A. I assume so.

Q. That matter was a subject of discussion between you [fol. 3354] two gentlemen?

A. I would assume it was, because it was part of the—there was no use settling our controversy with Hartford, and still leaving patents in the Patent Office to continue for another five years of fighting with others.

Q. Do you remember that you had conversations with Mr. Michael Owens and with Mr. James Blair about the same question, namely, the getting together of Hartford and Owens?

A. Yes, I had various conversations with them.

Q. Did Mr. Owens ever tell you it was more important from a business judgment to have the feeder under patent control, even to the extent of seeing control of Hartford, rather than having the whole field thrown wide open?

A. I don't recall that. Knowing Mr. Owens as I did, I think that would be directly the opposite of anything he would say.

Q. Did Mr. Blair ever tell you that?

A. No, I do not recall Mr. Blair saying that.

Q. I direct your attention to Government's Exhibit No. 611, a memorandum written by Mr. Henry W. Carter, No-

vember 7, 1923, I direct your attention to the third, fourth, and fifth full paragraphs, where Mr. Carter says:

"I also explained that our asking the court for a limited interpretation of Brookfield might result in reducing the usefulness of Brookfield as an anticipation of Hartford's pending claims, related to suspended gob, shaping of gob, [fol. 3355] timing, etc., both in the present interference proceedings and in subsequent litigation on these claims, if Hartford succeeds in patenting them.

"To the above inquiry, Mr. Owens and Mr. Blair separately replied, without hesitation, that in their judgment it should be the policy to make all out of Lott that is possible, no matter to what extent this may involve sacrificing chances of recovery under Brookfield—that the primary object which this company had in view, was the patent control of the feeder field for a term of years, and that in comparison with this, any possible money judgment (even of a million or more) should be regarded as distinctly secondary.

"They even stated, as their view, that the advantage of having the feeder field under some patent control is so great, from a business standpoint, that this company would rather see such control in the hands of Hartford than to have the field open—that consequently if we should lose out on Lott, we would have no interest in holding Hartford in the Patent Office by interference proceedings, or in defeating Hartford's claims in court—that our interest would rather be in [fol. 3356] aiding Hartford to maintain its control, than to narrow or defeat its patents, or delay their issue."

Does that refresh your recollection of the conversations you had with Mr. Owens or Mr. Blair?

A. No, I would say that I did not—Mr. Carter and I had entirely different views about the Lott patents. I thought they were basically good; he did not have much faith in them.

Q. My inquiry is directed not to what Mr. Carter thought, but what Mr. Owens and Mr. Blair said, the executive heads of the company.

A. What they said to Mr. Carter, I would not know. They certainly did not say it to me.

Q. Except you were present at the time? I do not mean the time he was there; you were around at the time and may have had similar conversations.

Mr. Middleton: Objection to that question. There is no evidence that he was present.

Mr. Isseks: I said he was not. I flatly said he was not.

The Court: I think the witness has already answered the question.

Q. Does a reading of the memorandum refresh your recollection at all of the conversations you had?

A. No, sir.

[fol. 3357] Q. In any event, the contract was finally made?

A. Yes, sir.

Q. Did you participate in the negotiations leading up to the contract, other than the conversations you had with Mr. Dorsey, the actual drafting of the contract?

A. Very little in connection with the actual drafting of the contract. I was the patent attorney. As I say, I was trying to get out of this five-year fight. What I was chiefly trying to do was to keep the principals talking together long enough to make some compromise. They were in a state of mind towards each other which litigants very often get into. My chief function was to keep them talking until they could get some basis for getting together.

Q. All through?

A. Yes, sir.

Q. Were you familiar with Section 22 of the agreement?

A. Yes, sir.

Q. Did you have any conversations with anybody at Owens regarding Section 22?

A. I don't recall that I did.

Q. There have been some pieces of paper in here indicating that some of the representatives of Owens were opposed to it, as well as Hartford was opposed to it, but Mr. Michael Owens insisted upon it. Do you remember that?

A. I remember we had trouble keeping them negotiating because of Mr. Owens' insistence that he had patents cov-[fol. 3358] ering what Hartford was doing, and he was going to determine who operated under those patents. The Hartford people would not yield to that. I assume it eventually got settled by the section you refer to.

Q. Do you remember that somebody pointed out there might be some question of a manufacturer of glassware being permitted to determine who other manufacturers of glassware should be?

A. I remember Mr. Owens taking the position that any

legitimate manufacturer of glassware was entitled to a license; but that he knew who any legitimate manufacturer of glassware was.

Q. He was going to determine that himself, as far as he had the right, under his patent?

A. He was.

Q. Do you remember somebody raising the question that that might be contrary to the Federal Anti-Trust Laws?

A. I don't know. That would be out of my province.

Q. The minute they hit the Anti-Trust Laws, you were away from it?

Mr. Middleton: Objection.

The Court: He may answer.

A. As a patent attorney, dealing with a patent monopoly, I would say I was not competent to pass upon the Anti-Trust Laws.

Q. Do you remember, after this agreement made April [fol. 3359] 9, 1924, various counsel for Hartford, and various counsel for Owens, had frequent conferences together as to what should be done to bring about the monopoly, as you call it? Monopoly of patents I think you called it. Did I misunderstand you?

A. Yes, when I said I was speaking of a monopoly of patents, I was speaking of a patent monopoly.

Q. There is no misunderstanding. You said monopoly of patents, first, did you not?

A. No, I said patent monopoly,—was the thing I was speaking of.

[fol. 3360] Q. Now, did you have these meetings after the contract was made with various counsel for Owens and various counsel for Hartford?

A. I say there was a lot of trailing interferences. The fact is at the time I wrote that letter from New London, I think there were just about seven new interferences had been declared, and they had to be settled as to what was to be done, with all of those auxiliary controversies that were existing between the parties.

Q. And the counsel met as to how to determine those various interferences, didn't they?

A. I have a recollection of having attended a meeting of that kind.

Q. There was more than one meeting, wasn't there?

A. Probably was.

Q. Do you remember there was a series of meetings, about once a month, as to what should be done with the various Miller interferences, Tucker, Reeves & Beatty interferences, and various litigations between certain Owens and Hartford licensees and other people?

A. I wouldn't think they were as often as once a month.

Q. How often would you say they were?

A. I would say an occasional meeting. I was practicing law in Detroit, I wasn't called in to probably all the meetings they had. I do recall being in at least one meeting.

Q. That meeting was where, the one you remember?

A. I think shortly after the contract was signed we had a meeting in Washington, in which we discussed what was to [fol. 3361] be done with a lot of these trailing matters.

Q. Don't you remember a lot of meetings after the contract, in the office of Hartford, and even in Detroit?

A. I don't think any of them fancied coming to Detroit. I think the meetings were in either Toledo or Washington or Hartford.

Q. But there were meetings?

A. There were certainly some meetings.

Q. You gentlemen decided what should be done in connection with these various matters in the Patent Office and in the courts?

A. Yes sir, that is what position we would take with reference to them. We either had to go on and continue to have the interferences or somebody had to concede priority to the other man. We had to dispose of them in some way if we were going to settle the litigation.

Q. You also decided what should be done in connection with the interferences where other patents were involved, like the Miller,—did you not?

A. Well, I didn't, because I didn't think I knew enough about the Miller situation.

Q. Did you also decide what should be done with the Tucker, Reeves & Beatty interferences?

A. We did, after there was a deal made with Tucker, Reeves & Beatty to settle them.

Q. I mean before that?

A. No, I don't see how we could have a meeting to settle something we had no interest in. We had no title or interest [fol. 3362] in the Tucker, Reeves & Beatty patents.

Q. Weren't you in interference with these various people?

A. Yes, very definitely so, but you were asking as to after we settled the Hartford and Owens interferences whether we settled the position we should take in connection with the other parties to those interferences, and my answer would have to be yes.

Q. I show you Government's Exhibit 619, which is dated June 2, 1924, a memorandum by Mr. Carter of a conference at Mr. Dorsey's office, at which I think you are supposed to have been present. It says, "As a preliminary report on patent conference had with Hartford in Washington last week by Mr. C. B. Belknap and myself." See if that does not refresh your recollection that among other things discussed by you were various suits by other people, not only the interferences among yourselves, but consideration of the suit of Tucker, Reeves & Beatty, proposed suit against Miller, and various interferences?

A. On the second page, in the fifth paragraph there is a reference to my stating I thought Corbett should be approached once more with a settlement in view, and it being agreed that I should try to see Corbett within the next few days before suit was filed. We had a patent, which was one of the patents we licensed Hartford on, covering the swinging burner Tucker and Reeves were using, and that refreshes my memory I was asked to see whether or not we couldn't settle that without going into further litigation. It appears from the first page I was only present during part [fol. 3363] of that conference, and that is about the only thing that I see that refreshes my memory.

Q. You did talk about litigation against Hartford, litigation against O'Neill, Hartford litigation against Tucker, Reeves & Beatty, did you not?

A. I have no recollection of it.

Q. You won't dispute Mr. Carter's memorandum?

A. No, but I was only there, it says, in the latter part of the time. I can only tell you what my recollection is.

Q. Did you attend more than one meeting at which there was discussion between Hartford and the Owens lawyers as to the various litigations that should be brought?

A. I think I did.

Q. Where were those meetings held, if you recall, besides the one you did remember in Washington?

A. The one I said I remembered in Washington, I think, was a different one than that.

Q. This was apparently within a month and a half after the original contract was signed?

A. I think there were two or three meetings within the next two or three months. We were going on with the expense of these fights, trying to terminate as much of it as we could.

Q. By "strikes" what do you mean?

A. I said we were going on——

Q. "Fights", did you say?

A. With these fights, interference fights.

Q. And you did make an effort to get Tucker, Reeves and [fol. 3364] Beatty to make some kind of proposition to you, did you not?

A. Yes. I discussed with them at various times the settlement of the controversies which we had with them.

Mr. Isseks: At this time I would like to offer as Government's Exhibit 717, letter dated June 21, 1924, written by the witness to Mr. Dorsey, with copy going to Mr. Honiss, stipulated as to genuineness by Hartford,—or perhaps they only stipulated it came from their files, at page 3. Counsel has shown me copy of the original, with signature on it.

Q. I will ask you if that is your signature?

A. That is my signature.

Mr. Isseks: With counsel's permission I will substitute the one with the signature, which will make the record a little easier.

I offer it in evidence, Your Honor.

The Court: It may be admitted.

(Government's Exhibit 717 read by Mr. Lewis.)

Q. Mr. Belknap, I show you Government's Exhibits 65 and 66. 65 is a night letter to Mr. Baker from Mr. F. Goodwin Smith, January 26, 1925, and 66 is a reply; and ask you whether that refreshes your recollection that you participated in the negotiations in an effort to get the Miller people to sell their patent applications and patents, if any, to the Hartford-Empire and Owens groups?

A. No, I don't recall that I had anything specifically to do with Miller. I was negotiating on the controversy, set- [fol. 3365] tlement of the controversy, with Tucker and Reeves.

Q. Does it refresh your recollection you talked to Mr. Smith about the Miller situation?

A. No, I think the Belknap referred to in that telegram is probably W. J. Belknap. I would not recall having had anything to do with that matter.

Q. You did have something to do, though, with the Tucker, Reeves and Beatty matter?

A. Yes sir.

Mr. Isseks: At this time I offer Government's Exhibit 718, photostatic copy of original letter dated July 9, 1925, addressed to the Owens Bottle Company, attention Mr. Baker, signed by the witness, stipulated as to genuineness by Owens-Illinois at page 9.

Q. I ask the witness whether it is his signature?

A. It is.

Mr. Isseks: I offer it in evidence, Your Honor.

The Court: That is June 9, 1925?

Mr. Isseks: July 9. I think there is a mistake in the copy. I think they put down "June 9" by mistake.

The Court: It may be admitted.

(Government's Exhibit 718 read by Mr. Apsey.)

[fol. 3366] Q. Does that refresh your recollection that you were familiar with what was going on in connection with the Miller acquisition?

A. I knew there were some negotiations going on to get Miller out because you could not settle the interferences if you took Tucker and Reeves out, and did not take Miller out.

Q. Finally you learned, did you not, that a deal was made both with Miller and Tucker, Reeves & Beatty?

A. Yes.

Q. And that Hartford paid one-half of whatever the price was in the case of Tucker, Reeves & Beatty, and Owens paid the other half of the Tucker-Reeves & Beatty price?

A. That is my recollection.

Q. You knew Owens financed Hartford's share for a period of time?

A. Yes.

Q. The total purchase price was $1,600,000, wasn't it?

A. It was around that figure. I thought it was around a million and a half.

Q. I think the record shows $1,600,000. On the Miller acquisition Owens, too, shared half of the cost, did they not?

A. I don't think I have any way to fix that fact.

Q. You don't know about it?

A. No. They may or they may not have.

Q. The record says they did. Does that refresh your recollection?

[fol. 3367] A. No. I would not dispute the record.

Q. Now, the Rankin feeder, are you familiar with the fact there was an acquisition by Hartford of the Rankin feeder?

A. I got just a faint recollection of it.

Q. Do you know that Owens participated in paying half of the purchase price of $65,000?

A. No. I don't recall I had anything to do with that particular matter.

Q. Do you remember after you acquired these Miller and Tucker, Reeves & Beatty rights, certain litigation was prosecuted on behalf of Hartford—the Lamb suit for instance?

A. Yes. I knew that Hartford had conducted several suits on their patents.

Q. You were advising, were you not, as a participant in Hartford-Empire royalties,—your client, rather?

A. My client, yes, but I was conducting a general patent law business in Detroit, and after we got through this five year period I got back to doing considerable other work, and I was not in on a great deal of the—in fact I had very little to do with the Hartford litigation.

Q. Don't you remember you were consulted after Lamb made an application for interrogatories in the Lamb suit?

A. I don't have any recollection of it.

Q. Don't you remember going to Hartford with your brother, W. J. Belknap, and Mr. Carter, and having a con-

[fol. 3368] ference with others—Mr. Williams, F. Goodwin Smith, and Herbert Knox Smith, as to what was to be done with those interrogatories that were filed?

A. No, I don't recall that. I would not say I wasn't, but I would not recall it. It was no different than any other case which I was handling at that time.

Q. You were interested in that litigation because of the fact they were your client?

A. I was busy with a lot of other litigation.

Q. I understand that, sir. I would appreciate if you would answer my question. Were you or were you not actively interested in the Lamb suit?

A. No, I will say I was not.

Q. Do you remember having a conference at Hartford some time in 1927 in connection with a request for interrogatories in which a question was raised about making amendments to the Owens-Hartford — Empire contract?

A. No.

Q. You don't remember that?

A. No.

Q. See if I can refresh your recollection. I show you Government's Exhibit 400, as to which objection has been sustained, but purports to be a diary entry of January 4 and 5 in 1927, and ask you whether that does not refresh your recollection. It is a diary entry of Herbert Knox Smith. I presumed you knew that, Mr. Belknap.

A. I don't know who the C. and W. Belknap referred to is. [fol. 3369] I have no recollection.

Q. You don't know of any C. W. Belknap but yourself, do you, interested in these matters here?

A. He's got C. and W. Belknap.

Q. Your initials are what?

A. C. B.

Q. Your brother's is what?

A. W. J.

Q. W. would have been your brother, and C. yourself, would it not?

A. It might have. I can't explain what somebody wrote in his diary.

Q. I am trying to see if I can refresh your recollection?

A. I have no recollection.

Q. No recollection at all?

A. No.

Q. Do you have any recollection of having any discussion at all in 1927 in regard to necessity of amending the Owens-Hartford general agreement because of possible action by the United States government?

A. No, I have no recollection. I think my client would be very apt to discuss that with their general lawyer and not with their patent lawyers.

Q. Do you remember having had such a conference in which their general counsel, Mr. Williams, was present, as well as others?

A. No. I don't remember it at all.

[fol. 3370] Q. Do you remember that there was a suit brought against Hazel-Atlas Corp.?

A. I knew there was such a suit brought.

Q. Did you participate in connection with a conference to determine whether that suit was to be brought?

A. I have no recollection.

Q. You would not deny, though, you did?

A. No. I might explain in connection with that that my brother, W. J. Belknap, was active in connection with the various Hartford litigations and I had very little to do with it.

Q. Were you advising Owens or was W. J. advising both companies, Owens and Hartford?

A. I suppose Owens consulted him at some times.

Q. In connection with the litigation?

A. Yes.

Q. You knew that Owens was paying half of the litigation that Hartford was prosecuting and Hartford was paying half of the expense of litigation that Owens was prosecuting?

A. My recollection is that Hartford did not contribute to Owens' litigation expense. That Owens litigation expense had stopped and Hartford brought their suit on their patents, and Owens made some contribution.

Q. The record shows here they were sharing each other's expense in connection with all gob feed patent claims litigations prosecuted by both of them.

Mr. Middleton: I object to this statement. It is untrue.

Q. Your recollection is Hartford did not pay——

[fol. 3371] Mr. Isseks: Your Honor, I don't want to take time to go into the exhibits that have already been produced, but the exhibits show it.

The Witness: Whatever the exhibits show. I don't have any recollection. I was not an officer of the company. Neither was I in Toledo. I was in Detroit, and I came to Toledo when my client asked me to.

Q. Do you know whether or not W. J. Belknap ever represented Hartford prior to April 9, 1924?

A. I would feel pretty sure that he did not.

Q. In other words, his connection came about as a result of this April 9, 1924, contract?

A. It came about sometime subsequent to and after their looking for a trial lawyer experienced in glass matters and he, being a trial lawyer, was employed by them.

Q. And he had worked for Owens before that?

A. He worked for Owens and Libbey-Owens and various glass companies.

Q. Who are the various glass companies—Hazel-Atlas?

A. I don't think he was ever employed by Hazel.

Q. I am trying to find out—Thatcher Manufacturing Co.?

A. No.

Q. Knox associates?

A. No.

Q. Rau?

A. No. The reason I said various other glass companies, Mr. Libbey, who was then active as the head of those companies, had various interests. Now, whether or not he ever [fol. 3372] did any work for the Libbey Glass Company I don't know, but he did various work for the glass companies in Toledo.

Q. Are you all through?

A. Yes.

Q. You meant by that the various glass companies, the Owens group?

A. The Owens, the Libbey, and the Libbey-Owens group.

Q. The Toledo group?

A. Yes.

Q. You knew of the Hazel-Atlas suit that was brought in Pittsburgh?

A. Yes.

Q. Did you participate in preparation for the trial of that case?

A. Not that I have any recollection of.

Q. Your brother did, did he not?

A. Yes.

Q. That decision in the court in the first instance went against Hartford-Empire, did it not?

A. That is my recollection.

Q. Were you consulted after that decision as to the policy of Owens in connection with the decision?

A. I might have attended some conference, but I have no recollection, Mr. Isseks.

Q. Did you learn that certain of the licensees of Hartford, particularly Federal, were threatening to stop payment of royalties in view of the decision of Judge Gibson?

[fol. 3373] A. I remember the Federal at various times were disgruntled because they felt the broad invention belonged to them and not to Hartford, and I presume a decision in that case might have caused some comment from them.

Q. I would appreciate it if you would answer my question: did you learn that Federal, after the decision of the District Court in the Pittsburgh case, were threatening to stop paying any royalties?

A. Please read me the question.

(Question read.)

A. Well, if they did threaten I probably learned of it, but I have no present recollection.

Q. Did you learn that Mr. Stewart, of Capstan, was taking the same position that Mr. Beatty, of Federal, was taking, namely, in view of the decision it might be a good thing to stop payment of royalties?

A. I would not be so apt to learn of Stewart as I would the other one.

Q. Do you remember the appeal in that case was a matter of concern to both Hartford and Owens, in view of the effect on the matter of royalties, if the decision was sustained?

A. Yes, I would think so.

Q. Did you have any conversation in that regard?

A. Not that I recall offhand.

Q. Do you remember any general conversation, sir?

Mr. Middleton: I object to the question because of its indefinite character.

[fol. 3374] A. I might have discussed it with somebody but I have no definite recollection.

The Court: The witness can answer.

Q. Do you have any recollection of general discussion with anybody, sir, about the fact if this appeal were lost Hartford and Owens would be in a position where they might not be able to collect royalties under their 1924 contracts?

A. No. I would not have any specific recollection. I would say it would be a normal thing for me to have had some discussion with somebody.

Q. Do you remember during this period there was consid-

eration given by Hartford and Owens of the desirability of effecting some kind of a settlement with Hazel-Atlas?

A. No, I don't recall during the period when the patent was held invalid that there was any discussion of settlement.

Mr. Isseks: May I have Government's Exhibit 127, which is being deferred?

Q. Don't you remember because of the fact you heard that some of these licensees—you said you thought you heard Federal might have objected—made some threat to refuse to pay royalties, a suggestion was made by Mr. Levis that perhaps one way of avoiding any difficulty would be an announcement that Hazel had come in and was acting as a licensee?

A. No. Not during that period.

Q. You don't remember that during that period?

[fol. 3375] A. No.

Q. Do you remember that suggestion was made that if Hazel came in at that time the outsiders might give up the fight and come into the Hartford fold?

A. I don't remember in that period which you are asking me.

Q. I show you a memorandum, Government's Exhibit 127, on which a ruling has been deferred on the ground it is privileged. I direct your attention to the two paragraphs on the bottom of the first page and to three paragraphs on the second page, and see if that does not refresh your recollection?

A. No. I am not sure that I even met Mr. Levis at that time.

Q. In 1930?

A. Yes.

Q. Did you hear from Mr. Williams the matters that are the subject of the memorandum which he wrote on October 8, 1930?

A. No. It is a matter I have no recollection of being consulted upon.

Mr. Isseks: I assume Your Honor still wants to hold this memorandum under advisement.

Q. Were you representing Hartford in any way, during this period—1930—after the decision in Pittsburgh?

A. No. As I say, other than that I might have substituetd for my brother in some matter.

Mr. Isseks: Your Honor, at this time we offer in evidence, [fol. 3376] a letter on the stationery of Whittemore, Hubbard & Belknap, dated December 24, 1930, addressed to F. Goodwin Smith, and signed by the witness, stipulated as to genuineness by Hartford and handed to me by Mr. Wall.

Q. Is this your signature, Mr. Belknap?

A. Yes. It looks like my signature. I am pretty sure it is.

Mr. Isseks: I offer it in evidence.

(Marked Government's Exhibit 719.)

The Court: It will be admitted.

Mr. Haight: May I ask Mr. Belknap one question?

The Court: You may.

Mr. Haight: This is preliminary to making a motion. In writing this letter were you representing Hartford or Owens?

The Witness: I would think that I was representing Owens. It would be pretty difficult for me to answer. I probably didn't charge anybody for writing that particular letter. It was an expression of my personal opinion.

Mr. Haight: You can't say you were giving an opinion to Mr. Smith as his attorney or as attorney for Hartford-Empire Company?

The Witness: No, I did not give it as an opinion to Hartford-Empire Company. I gave that as an explanation as to why they said there was a changed attitude I had on the Lott patent. I felt, originally, if they made that settlement the Lott patent should have an even chance of being sustained and not having been sued on for years, I thought the question of laches destroyed usefulness. That was just my [fol. 3377] personal opinion on it, but I did not pass it as an opinion to Hartford.

Mr. Isseks: Anything else?

The Witness: No.

Q. You were influenced, during that period of time, by the money rolling in, weren't you?

Mr. Middleton: I object.

The Court: It will be sustained.

A. There wasn't any money rolling in for me. In fact, there would have been more money in it for me if they would have kept on with the litigation.

Q. Your association was pretty close to Owens, was it not, prior to 1932?

A. Well, it was spasmodic. Mr. Carter consulted me quite a lot. When Mr. Boshart was president I was consulted very little and I was not consulted after Mr. Levis came in, until sometime after he had been in.

Q. I will show you Government's Exhibit 550, which is a letter dated December 3, 1924, addressed to Mr. F. Goodwin Smith, by R. D. Brown, and I will ask you whether the statements attributed to you therein by Mr. Brown, actually set forth what you told Mr. Brown? I direct your attention particularly to a paragraph in the center of page 2 where Mr. Brown purports to quote you. He says, "Mr. Belknap wishes Hartford to return to Hazel-Atlas, in exchange for their patent rights, a portion of the royalties which they pay us. He tells us that Owens is prepared to give up quite a substantial part of their share of the feeder "roy-
[fol. 3378] alties payable by Hazel-Atlas and suggests that Hartford would be justified in giving up, say, 25% of Hartford's share in such royalties."

A. I recall having a meeting here in Toledo with someone from the Owens Company, one of the officials, I don't know whether it was Mr. Owens or not, with one of the Hazel-Atlas people, in which we agreed to throw open our applications and patents for them to inspect with a view, if they felt there was enough in the patent situation, that they would come in and take a license. They were asserting some kind of a claim that because Owens had at one time sold their wide-mouth jar rights to Hazel for a certain percentage of stock, that Owens should permit them to come in on some kind of a basis.

Q. That is five months later. I will come to that in the next question. This is in December. The next exhibit is 644. I will ask you about that in a few minutes. I am talking about December, when Mr. Brown purports to quote you in the language I read in Government's Exhibit 550, and my question is whether Mr. Brown was quoting you correctly in December, 1924, some eight months after the contract was made?

Mr. Middleton: May I inquire what he means when he says it was five months later? The witness was talking about the 1909 contract.

The Court: He may explain.

Mr. Isseks: The witness made a statement of what took [fol. 3379] place at a conference in which Mr. Philbin was present, it shows in an exhibit here, which Mr. Carter writes, a conference in which Mr. Philbin was present in which he was aware of certain matters and Mr. Belknap was present. His answer was not a direct answer.

A. You asked whether it would refresh anything in my memory and I was trying to tell you as close as I could what it did refresh.

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[fol. 3380] (At 10 o'clock a. m., Wednesday, April 9, 1941, the trial was resumed.)

The Court: Proceed.

Q. Mr. Belknap, the last answer you gave in answer to a question by the Court, on page 2149:

"The Court: The question now is whether or not that refreshes your memory?

"The Witness: Not any further than I explained in my previous answer."

The previous answer is two pages before that, starts at page 2147:

"Q. I will show you Government's Exhibit 550, which is a letter dated December 3, 1924, addressed to Mr. F. Goodwin Smith, by R. D. Brown, and I will ask you whether the statements attributed to you therein by Mr. Brown, actually set forth what you told Mr. Brown? I direct your attention particularly to a paragraph in the center of page 2 where Mr. Brown purports to quote you. He says, 'Mr. Belknap wishes Hartford to return to Hazel-Atlas, in exchange for their patent rights, a portion of the royalties which they pay us. He tells us that Owens is prepared to give up quite a substantial part of their share of the feeder royalties payable by Hazel-Atlas and suggests that Hartford would be justified in giving up, say, 25% of Hartford's share in such royalties.'

"A. I recall having a meeting here in Toledo with someone from the Owens Company, one of the officials, I don't [fol. 3381] know whether it was Mr. Owens or not, with one of the Hazel-Atlas people, in which we agreed to throw open our applications and patents for them to inspect with

a view, if they felt there was enough in the patent situation, that they would come in and take a license. They were asserting some kind of a claim that because Owens had at one time sold their wide-mouth jar rights to Hazel for a certain percentage of stock, that Owens should permit them to come in on some kind of a basis."

Do you have any recollection as to when you had the conversation with the Hazel-Atlas people that you refer to in your answer?

A. No, I cannot remember the exact time.

Q. Was it shortly after the April 9, 1924, contract?

A. Yes, it was some time after that, whether it was six months or a year I wouldn't recall.

Q. Not more than a year?

A. I wouldn't think it. It might have been.

Q. And did you, or Owens, rather, at that time tell the Hazel-Atlas people you were prepared to give up part of the share of the feeder royalties payable by Hazel-Atlas?

A. I think it was more in the nature of a discussion of Hazel's claims than it was an offer to give up.

Q. Was anything said about Hazel-Atlas coming in and sharing any part of the royalties paid?

A. I don't think so, at that time.

Q. By "that time" you mean at the time of the first con-
[fol. 3382] ference you mentioned?

A. Yes.

Q. I show you again Government's Exhibit 550, and direct your attention again to the paragraph in which Mr. Brown says that you said that you wished Hartford to return to Hazel-Atlas in exchange for their patent rights, a portion of their royalties. I will ask you whether you remember at any time having a conversation with anybody at Hartford with regard to the sharing by Hazel-Atlas of royalties, the conversation taking place sometime in the latter part of 1924?

A. I don't recollect asking Hartford to give up a share of their royalties. I know there was some question about Owens making some settlement.

Q. In this letter Mr. Brown says you said Owens was prepared to give up quite a substantial share of their royalties. Do you remember saying that to Mr. Brown?

A. Don't remember saying it to Mr. Brown.

Q. You would not deny you said it?

A. No, I wouldn't deny I said it, because I have no recollection.

Q. Now, Mr. Brown says you said it. Do you dispute you said it?

A. Well, I cannot dispute anything I haven't any recollection of.

Q. Do you have any reason to question Mr. Brown's veracity when he makes the statement in this exhibit which is dated December 3, 1924?

A. No, I don't have any reason to either question or affirm it.

[fol. 3383] Q. Do you recall having a conference in the early part of 1935 at Hartford, at which were present your brother, Mr. W. J. Belknap, Mr. R. D. Brown, Mr. Carter, and perhaps others of Hartford or Owens, with regard to the same subject-matter, namely, permitting the Hazel-Atlas to share in any royalties that it might be obligated to pay under any license agreement?

A. Did you say 1935?

Q. I am sorry. I meant during 1925.

A. No, I have no recollection of that.

Q. Did you look at Government's Exhibit 644? I mentioned it yesterday. Did you have a chance to look at it?

A. No.

Q. I show you Government's Exhibit 644, which is from Mr. Carter to Mr. Boshart, stipulated as to genuineness by Owens, admitted in evidence, which refers to a conference you attended with other people, in New York, the persons named, and the statement is made therein at the end of the first page, in which it is said the proposition was submitted by Mr. Belknap. Do you notice the statement?

A. (After referring to exhibit.) I notice the statement.

Q. Do you notice you were supposed to be present? It says, "Mr. C. B. Belknap and myself were also present on this occasion but Hartford was not represented except through us", and the proposition is set forth, and my question is whether you remember the occasion?

A. I don't remember the specific occasion as of that date but I do remember we had a conference with the attorneys [fol. 3384] for Hazel-Atlas, Mr. Neave and Mr. Philbin, at which the proposition was made to make some kind of a temporary settlement with Hazel for a period of time and

then see whether they could make up their mind to take a permanent license or whether they wanted to make an arrangement similar to the suggestion I made to Hartford and Owens.

Q. Part of that arrangement is as set forth in the memorandum here, namely, during the two-year period—I will read what it says:

"For this license, Hazel to pay nominally the full Hartford feeder rate but to receive back through Owens"—that is the words—"and as a recognition of Hazel's patent position, a sufficient sum to reduce Hazel's payments to $150,000 for the two-year period of $75,000 each year."

A. I think in general that type of provision, that Owens would, out of its share of the royalties, pay back to Hazel for the Brookfield patent, or whatever they claimed, a part of what Owens received.

Q. Then it is also said, at the end of the two-year period if Hazel was to continue its operations, it would be subject to three-fourths of the regular Hartford royalties,—Item 4 on the next page?

A. Yes, provided Hazel used its own feeders, but if it used the Hartford feeders, to pay the full royalties.

Q. Item 5: "Hazel to stop assisting Miller and to lend its full support to Owens in attempting to establish the Lott patent"?

[fol. 3385] A. I wouldn't recall anything about that fifth item.

Q. You don't dispute it took place, when Mr. Carter says so, do you?

A. I can neither dispute it nor affirm it. I have no recollection about it.

Q. And Mr. Philbin and Mr. Neave turned it down?

A. That is my recollection.

Q. And the Neave referred to there is the late Charles Neave, is it not?

A. It is.

Q. Not his son, Alexander Neave?

A. No.

Q. And the Philbin referred to is the Philbin that represents Hazel-Atlas in this case?

A. That is also true.

Q. Do you remember after the decision in Pittsburgh the similar suggestion was made by Mr. Lewis, namely, that one way of getting Hazel in was to give Hazel a participation in the royalties, and in that case the payments and the participation to be substantially identical?

A. After the decision in Pittsburgh?

Q. After the District Court decision.

A. No, I have no such recollection.

Q. See if I can refresh your recollection. I am sorry, Your Honor, I am repeating, but I am doing it chronologically. I think I asked the witness yesterday, but I think perhaps this document may refresh his recollection. I refer you to Government's Exhibit 127, which is not in evi-
[fol. 3386] dence as the Court has deferred any decision on it, memorandum by Mr. Lloyd T. Williams. I think you saw it yesterday. This is the first full paragraph on the top of page 2. See if it does not refresh our recollection?

A. (After referring to same.) No, sir.

Q. It does not?

A. No.

Q. Now, after the decision of the Circuit Court of Appeals for the Third Circuit, were you advised of the fact Hazel-Atlas was contemplating petitioning for writ of certiorari to the Supreme Court?

A. I don't know that I was.

Q. Were you advised of the fact that Hazel-Atlas sent a gentleman by the name of McCarty out to Toledo, in an effort to find out about the origin of the so-called Clarke article?

A. I don't recall that I was.

Q. Either way?

A. No.

Q. Were you consulted by Mr. Levis in connection with the negotiations leading up to the July 1, 1932, contract, various agreements between Hazel-Atlas and Hartford, and Hazel-Atlas and Hartford and Owens?

A. Very slightly.

Q. In what connection?

A. Why, I think Mr. Levis discussed it with me in some general way but I was very busy on other matters at that time and I had very little to do with the 1932 agreement.

Q. Do you have any recollection at all about the subject-
[fol. 3387] matter of the conversations?

A. No, because it was very incidental so far as I was concerned.

Q. I show you Government's Exhibit 641, which is a letter from Mr. R. F. Hatch to Mr. Carter, and sending a copy to Mr. Belknap. Do you recall whether the gentleman referred to there is yourself or your brother, Mr. W. J. Belknap?

A. I wouldn't recall which it was.

Q. Do you remember getting any papers from Mr. Hatch about the time of the date of that letter, which is approximately, I think the letter was received, according to the exhibit, on May 25, which is about three weeks after the decision in the Circuit Court of Appeals of the Third Circuit,—do you remember receiving any document from Mr. Hatch on or about that time?

A. No.

Q. Perhaps I can refresh your recollection. I show you Government's Exhibit 642, which does not refer to Mr. Belknap but relates to Mr. Hatch's trip to Toledo, and refers to certain papers. I will ask you whether that refreshes your recollection at all?

A. No, I was practicing law in Detroit then and I don't recall that that particular item was called to my attention.

Mr. Middleton: I can't hear you.

The Witness: I say I was practicing law in Detroit at that time. I don't recall that particular item.

Q. You just don't remember about it either way?

A. No, I have no recollection of it.

[fol. 3388] Q. Did your brother talk to you about it, about receiving any papers relating to the Clarke article?

A. No.

Q. You have no recollection whatsoever?

A. No.

Q. You said Mr. Levis talked to you, but you don't remember what he said, about the negotiations leading up to the July 1, 1932, contract?

A. No; the only thing I have any recollection on is that he discussed whether or not, in view of alleged claims of Hazel-Atlas against Owens, Owens was justified in giving up part of its royalty to Hazel-Atlas.

Q. Anything else?

A. No.

Q. Were you told one-half of the $1,000,000 to be received by Hartford was to go to Owens?

A. I believe I knew that but I don't know whether Mr. Levis told me.

Q. Were you told that there was reason to believe that that by the entering into of these various agreements the Miller Defense Association group and other users of feeders might come in under the Hartford system?

A. Not that I recall. I might explain in connection with that, that things like the original 1924 contract and the contract with Tucker, Reeves & Beatty, things I had taken an active part in, I think I can remember fairly definitely; things which came in as incidental parts of my practice which I was in touch with one day and working on some-[fol. 3389] thing else entirely different the next, I cannot recall distinctly.

Q. Do you remember under the July 1, 1932, contract, Owens discontinued any contribution to Hartford's legal expense which they had been paying theretofore?

A. I think I knew afterwards that they weren't contributing, but whether I knew it at the time you speak of, I wouldn't recall.

Q. Were you told under this new July 1, 1932, set-up, Hartford gave certain suction rights to Owens which it had not given under the April 9, 1924, contract?

A. I think there was some sort of option on suction rights given.

Q. Have you seen the contract since then?

A. Yes, I had occasion to see it quite a lot in connection with the drafting of the present contract of 1935.

Q. You say all it did was to give Owens an option under certain suction rights?

A. Without looking at the document, that would be my offhand recollection of it.

Q. See if I can refresh your recollection. I show you Government's Exhibit 141, which is a document written by Mr. Carter to the directors of Owens-Illinois, dated July 8, 1932. I direct your attention to page 10.

A. Have you a copy of the contract you are asking about?

Q. Yes, I can give you a copy of the contract, Government's Exhibit 147, "Suction Inventions License Agreement".

A. (After referring to same.) I think I am half right in my recollection. There was a license given as to then-
[fol. 3390] existing patents.

Q. Suction patents?

A. Suction patents; and an option given as to future ones.

Q. In other words, it was a license as to existing suction patents up to a certain period of time and then an option as to suction patents from July 1, 1932, to January 3, 1945?

A. Without taking the time to study the contract, in general, that would be my general impression.

Q. Now, prior to this contract dated July 1, 1932, Owens was the only manufacturer, so far as you knew, using the suction process in this country, for making bottles?

A. I think Ball Bros. were using it.

Q. Ball Bros. used it too?

A. I think so.

Q. Under license from Owens?

A. I think there were some other companies that had licenses, whether they were using the machines—you say prior to?

Q. July 1, 1932. Well, at that time, I mean, when the contract was made.

A. Well, I would not be competent to say as to who was or who was not using it. I knew there were other licenses outstanding.

Q. But from Owens?

A. From Owens.

Q. Is it a fair statement to say Owens controlled all the suction patents at that time other than the ones they had from Hartford?

[fol. 3391] A. No, I wouldn't think that would be a fair statement. I think there were a lot of other people who took out suction patents.

Q. Who were they?

A. I would have to examine the records in the Patent Office to recall, to get them. I wouldn't have personal knowledge of it except I do know a large number of people in the industry are continually taking out patents.

Q. Anybody else using it at that time, using the suction machine devices, other than Owens or Owens' licensees, so far as you knew?

A. That was on July 1, 1932. I think, as far as my personal knowledge is concerned, that would be correct. I do

know there was an O'Neill machine, whether it was in operation, in production, at that time, I wouldn't have any personal knowledge.

Q. At any event, let's say today, is anybody using the suction device for any purpose commercially, other than Owens, do you know?

A. I don't know whether Ball Bros. is still using any of those machines or not. I think the Heinz Company are using at least one machine.

Q. And if Ball Bros. is using it, it is a former Owens' licensee?

A. Yes, those patents have expired a great many years ago.

Q. Yes, but you have improvement patents, do you not?

A. We have improvement patents of various improve-
[fol. 3392] ments, but the machines which the Ball Bros. had on license, the patents on those have expired.

Q. Now, when did those patents expire, the suction patents?

A. I couldn't answer without making some search as to the time, but I would think the main patent on it expired five or ten years ago.

Q. Before 1932 or after?

A. Well, I would just be making a guess.

Q. You were executive vice-chairman of the Board of Owens-Illinois Company. You ought to know.

Mr. Wall: Objection to the guess.

The Court: Well, he may make an estimate, as near as he can.

Mr. Wall: If it is more than a guess.

The Witness: Well, my estimate would be about ten years ago, but that would be merely an estimate on my part.

Q. Before 1935, in any event?

A. That is my recollection.

Mr. Middleton: I submit that is all stipulated, if the Government wants to put it in. There is a very elaborate stipulation on patents and when they were to expire.

Mr. Isseks: May I proceed?

The Court: Yes, you may proceed.

Q. If those basic patents had expired by July 1, 1932, what was the purpose of getting a license from Hartford on its suction patent, do you know?

A. Yes, very definitely.

[fol. 3393] Q. Well, I will take it.

A. All machines have various movements. A bottle machine is quite a complicated piece of mechanism, and quite often there are inventions which are on the feeder fed machine which overlap and read onto a suction machine, and quite often a man working in one line of endeavor, such as a Diesel type of motor, may make inventions which may cover an ordinary internal combustion type of motor. And our chief reason for having a license on suction was so we would not be interfered with in the use of our suction feeder.

Q. Now, in 1935 you mentioned it yourself,—this agreement was remade and the rights extended under the option on suction?

A. No, the option rights weren't extended in the same form in which they were in the '32 agreement. In '35 we simply took a non-exclusive, paid-up royalty on suction.

Q. What was it in '32?

A. In '32, as to any inventions that took place between those that were embodied in the machine as it then existed, and the termination of the end of the license period, there was an option to purchase those at, I think, some arbitrated price. In the 1935 agreement, any option to take patents was not included; it was simply an out and out license.

Q. Royalty-free?

A. Royalty-free, as I recall it.

Q. Now, had your company issued any license to anybody in connection with suction at any time in your recollection since you have been associated with your own com-

[fol. 3394] pany as counsel or otherwise,—I think you said in 1919,—a new license?

A. You are speaking of the Owens?

Q. Oh, yes, I speak only of the Owens.

A. I don't know what they may have issued prior to my being connected with the company as an officer, that is, I could not recall it offhand. Since I have been connected with the company in 1932 I question if they have, in fact I am pretty definite they have not granted any licenses.

Q. On suction patents?

A. On suction patents.

Q. You are familiar, are you not——

A. People could make those machines pretty much if they wanted to.

Q. You are familiar with the history of the company prior thereto, since you were counsel?

A. Well, I was counsel employed for certain specific things and I would not recall what all their licensing was.

Q. Do you know of any licenses outstanding today, as vice-chairman of the Board and former vice-president in charge of legal matters, including patent matters, on any of your suction patents?

A. Yes, we have a license to Hazel-Atlas Glass Company.

Q. Made in 1932, was it not?

A. Yes. We have a license to the Heinz Company.

Q. Made when, do you know?

A. I would not recall the date.

[fol. 3395] Q. Pretty far back, as far as you know?

A. As far as I know it is.

Q. Anybody else?

A. No.

Q. Now, as far as you know has Hartford-Empire Company issued any licenses since 1932 or at any time prior thereto in connection with these suction devices, other than the ones issued to your company in '32 and '35?

A. I would not have any knowledge of any.

Q. I said as far as you know. Do you know of any?

A. As far as I know, they haven't.

Q. I would like to go a little into some of these other contracts entered into in 1932. Were you told by Mr. Levis Hazel-Atlas was asking for a new agreement between Hazel-Atlas and Owens in July, 1932, as part of the arrangement which resulted in these eight contracts executed, in evidence here as Government's Exhibits 142 to 149, inclusive?

A. Yes, I was told that all previous contracts would be wiped out, and all disputes settled, and an entirely new set of contracts were to be in existence.

Q. In other words, you were told there was going to be a new contract with Hartford, a new contract with Hazel-Atlas, a new contract between Hazel and Hartford?

A. Yes.

Q. That was all part of a general clean-up?

A. You are asking me as to 1932?

Q. Yes, sir, only '32; July 1, 1932.

A. I am sorry if I in any way gave you any misunder-[fol. 3396] standing. I think part of my answer relates to 1935.

Q. Then I will start all over. Going back to 1932, were you told by Mr. Levis about the new contract being made between Owens and Hazel-Atlas relating to the rights of the parties?

A. I don't recall whether I was specifically told by Mr. Levis, but I know there was such a contract being made.

Q. And you were told, were you not, by Mr. Levis, it was all part of an arrangement by which Owens would make agreements, first with Hazel-Atlas and with Hartford, and Hartford and Hazel-Atlas, in turn, would make a separate agreement?

A. I think part of the agreement with the Hazel-Atlas included a change in the amount of the percentage of royalties that Owens got from Hartford, and that I certainly must have known that Hazel-Atlas took a contract.

Mr. Philbin: Might I inquire whether the witness is being interrogated regarding the 1935 contracts or——

The Court: July 1, 1932.

Mr. Philbin: That was my understanding of the way the questions were worded, but I was confused because there was talk of "a new contract" between the Owens Company and Hazel-Atlas.

The Court: That has been definitely limited. The question now has been definitely limited to the exchange of contracts July 1, 1932.

Q. I show you Government's Exhibit 148, which is a general license agreement between Owens-Illinois Glass [fol. 3397] Company and Hazel-Glass Company, and I ask you whether you were informed at the time by Mr. Levis of the fact Owens and Hazel-Altas were entering into that agreement?

A. Yes, I would say I knew, and certainly discussed with Mr. Levis, in fact, such an agreement.

Q. Were you also told about the supplemental agreement, which is Government's Exhibit 149, between Owens and Hazel-Atlas?

A. Yes, sir.

Q. And were you told that one of the reasons for Owens' entering into this agreement was because Hazel-Atlas "expressed the fear that Owens might go entirely to suction and thus cease to contribute to Hartford's divisible income while still getting its split of the fund to which Hazel might be largely contributing"?

Mr. Middleton: I object.

The Court: Overruled; he may answer, if he knows.

Q. I am directing your attention to Section 1 of that contract.

Mr. Middleton: Which contract?

Mr. Isseks: The one the witness has in his hand, supplemental agreement.

The Court: Amendment of the contract.

Mr. Isseks: Supplemental agreement. They don't call it "amendment". Government's Exhibit 149.

(Question read by reporter.)

A. I don't remember being specifically told that.

Q. I show you Government's Exhibit 141, which is a [fol. 3398] memorandum by Mr. Carter, dated July 18, 1932, and I direct your attention to the bottom of page 14, where Mr. Carter says:

"Hazel has expressed the fear that Owens-Illinois may go entirely to suction and thus cease to contribute to Hartford's divisible income while still getting its split of the fund to which Hazel might be largely contributing."

"By Section 1 of this contract"—which is Government's Exhibit 149 I showed you—"Owens-Illinois meets this apprehension on the part of Hazel by what in effect is an agreement that as long as both Hazel and Owens-Illinois remain under general license from Hartford, Owens-Illinois will not reduce the proportion of ware made by Owens-Illinois and its subsidiaries on feeders embodying the licensed inventions below a certain percent, based on calculated royalties at Hartford's lowest rate. If it does so, Owens-Illinois agrees to pay to Hazel one-third of the amount which would otherwise have been due to Hartford on its deficiency. The exact percentage which Owens agrees not to go below still remains to be filled in at this writing by agreement between Mr. McNash and Mr. Levis. It will probably be something about 15%."

I direct your attention to the fact it is 15% in the contract, and ask you if that refreshes your recollection that Mr. Levis told you about Owens' apprehension about the way it was to be made?

[fol. 3399] A. No, that contract refreshes my recollection there was a provision for 15%, but it doesn't refresh my recollection of Mr. Levis telling me about it.

Q. Or the reasons why it was put in?

A. No.

Q. Do you remember also the second paragraph of the same section takes care of a situation which Owens might be worried about, and I direct your attention again to page 15 of the memorandum, following along with what I read before, or what Mr. Carter says:

"We regard this assurance as perhaps the most onerous feature of this series of contracts, insofar as Owens-Illinois is concerned, but understand that it was necessary in order to secure Hazel's final agreement to these contracts. By the second paragraph of the same section, Hazel agrees to give a similar assurance to Owens-Illinois by which it agrees to pay to Owens-Illinois royalties equal to one-third of the amount by which royalties, calculated at Hartford's lowest rates, as defined in said agreements, on glassware produced by Hazel-Atlas and its subsidiaries, on feeders embodying licensed inventions, are less than 75% of royalties calculated at said rates on all glassware produced in that year by Hazel-Atlas and its subsidiaries on feeders embodying licensed inventions and on suction machines."

Then Mr. Carter says:

"This assurance might or might not prove important [fol. 3400] "to us. A joker may lie in the fact that the assurance does not mention a possible production of glassware on flow feeders, or the like, not embodying Hartford's licensed inventions, or not embodying suction."

Do you recall that?

A. I recall nothing about this memorandum of Mr. Carter's.

Q. I didn't ask you about the memorandum. I asked you whether Mr. Levis told you that. Does it refresh your recollection Mr. Levis told you it was necessary to give those contracts to Hazel-Atlas, and to enter into the supplemental agreement, because otherwise Hazel would not sign the final agreement?

A. No. As I tried to explain to you, I had practically no contact with that Hazel-Atlas contract until after I came down to Toledo.

Q. Now, I show you Government's Exhibits 143 and 146, and ask you whether those agreements were called to your attention at the time of their execution, by Mr. Levis, or

any other executive of Owens? The Hartford and Hazel-Atlas is a supplemental agreement, 143; and 146 is a supplemental agreement between Hartford and Owens. I will ask you whether they were called to your attention at the time, in 1932?

A. (After examining same.) I don't recall anybody specifically calling them to my attention.

[fol. 3401] Q. Do you remember seeing them on or about the time they were executed, sir?

A. Yes, sir.

Q. Did Mr. Levis or anyone else at Owens tell you that these separate supplemental agreements were designed to take care of the contingency that, by some outside influence or decree, governmental or otherwise, Owens in the one case, or Hazel in the other, should be unintentionally deprived of their respective rights to participate in the divisible income over and above $850,000.

Mr. Middleton: If Your Honor please, I think the contracts speak for themselves in that regard. I think it is right in the contract.

The Court: The question is whether or not he was told by Mr. Levis. What that not the question?

Mr. Isseks: Or by any other executive.

Mr. Middleton: I submit whatever he was told would be of no consequence so far as the contract is concerned, because the contract has a provision with regard to that, and that would govern.

The Witness: I don't recall that anybody specifically called my attention to it.

Q. I show you Government's Exhibit No. 141, a memorandum of Mr. Carter, dated July 18, 1932, prepared for a directors' meeting, in which he says, at page 16:

"This brings us to the reasons for the concessions made by this company to both Hartford and Hazel in these agree-

[fol. 3402] ments. It is our opinion that on the whole, our situation will more likely be improved by our entering into them.

"Contracts 4 and 8,"——

Government's Exhibits Nos. 143 and 146 which I just showed you——

"being separate Supplemental Agreement between Hartford-Empire Company and Owens-Illinois Glass Company,

and between Hartford-Empire and Hazel-Atlas Glass Company, are designed to take care of the contingency that by some outside influence or decree, governmental or otherwise, Owens-Illinois in the one case, or Hazel in the other, should be unintentionally deprived of its right to participate in Hartford's net. In effect, these Supplemental Agreements provide that under the assumed contingency, Hartford and Hazel, or either of them, may continue to use feeders and formers involving Hartford's licensed inventions without payment of royalties other than certain minimum royalties which shall not exceed $1500 per year per feeder, or $500 per year per former."

Obviously, he must have meant Owens when he said Hartford and Hazel. Do you remember that being brought to your attention by somebody at Owens—I do not mean the memorandum—I mean the thought?

[fol. 3403] A. No. As I told you, my contact with that matter was very incidental.

Q. You did, as you testified yesterday, finally become associated two-thirds of the time with Owens, beginning, I think you testified, in the Fall of 1932?

A. November 1st, 1932.

Q. And then you said you became an executive officer in the Spring?

A. I became vice-president.

Q. Do you remember at that time Mr. Levis calling to your attention the fact that there was a controversy between Hartford on the one hand, and Hazel on the other hand, as to whether or not Hazel should pay royalties on its plug feeder?

Mr. Middleton: May I object, Your Honor, and state my reasons?

The Court: Yes.

Mr. Middleton: There is a vice in questions of this kind that is insidious. Is there any evidence in this record that Mr. Levis told Mr. Belknap anything of that kind? No. The question has no foundation in the evidence; but the examining attorney is, in effect, testifying by continually asking that sort of question which presupposes something in the record to justify it. There is no reason for him to say: Did not Mr. Levis tell you so and so, and so and so, unless there is something in the record to indicate that he

[fol. 3404] did. He may examine the witness as to his knowledge, and so on; but to continually carry the inference, with strong, vigorous examination, that Mr. Levis told him something, is not justified; it is no proper way to examine him; and it is, in effect, a loaded question. Mr. Isseks has done it so often. We have hesitated to say anything about it, because we have been patient. But, Your Honor, this is something that has a vice so insidious that we cannot let it go, so far as our clients are concerned, without calling it to the Court's attention.

There is nothing more vicious than loaded questions, or cross-examining questions, which presuppose something to exist in the evidence which is not in the evidence. This whole type of examination is loaded with that vice.

I therefore object to this question, and to all others like it.

The Court: I can assure counsel, so far as a question propounded by the cross-examiner is concerned, if the witness' answer is in the negative, the question or its contents has no effect upon the court's thinking in the matter at all. If counsel pursues that sort of questioning, and he receives negative answers, the ultimate result is negative, except that we have taken some time.

You may proceed.

[fol. 3405] (Question read.)

A. I recall there was some controversy as to interpretations of the contract between Hartford and Hazel; and that Owens' position was on it that they had made a contract, and whatever the contract was, it was there; if those particular feeders came under the contract, or any other question that was involved, that was to be determined by the contract. That is the recollection I have of it. I think Hartford was trying to get a revision of the contract, after they had made the contract with Hazel.

Q. Anything else?

A. That is all.

Q. My question is, did Mr. Levis tell you about the controversy?

A. As to my offhand recollection, I would say no.

Q. You are pretty clear about that?

A. I have no recollection of it.

Q. Will you definitely say he did not tell you about it?

A. No, I have no definite feeling, one way or the other, on it.

Q. Do you not remember that Mr. Levis told you about it, and asked you to help try to iron the thing out?

A. In the absence of something to refresh my memory on it, I will have to answer no.

Mr. Isseks: That is the only way I can get anything. I offer at this time a letter written by Mr. Levis to Mr. F. Goodwin Smith, dated May 27, 1933; stipulated as to gen-
[fol. 3406] uineness by Owens-Illinois at page 23. It is not in Your Honor's book. We found it last night, after we had this controversy as to whether or not these gentlemen had anything to do with the plug feeder matter.

Mr. Middleton: May we inquire what controversy there was last night? It is on the record. It may be misleading, unless stricken.

Mr. Isseks: I agree to strike it out.

Mr. Middleton: You do or do not?

Mr. Isseks: I do.

The Clerk: Government's Exhibit No. 720.

Mr. Isseks: It has been stipulated as to genuineness by Owens-Illinois.

The Court: It may be admitted.

Thereupon, Government's Exhibit No. 720 was read to the Court by Mr. Apsey, of counsel for the government.

Q. Mr. Belknap, does that document refresh your recollection that you did have some conversations with Mr. Levis about the controversy between Hartford and Owens relating to the plug feeder?

* * * * * * * *

[fol. 3407] The Witness: No, I don't think it refreshes my recollection any further than I have previously testified.

Q. But you said you do not recall Mr. Levis telling you. You said no. definitely.

A. I said I recall the general controversy, but I do not recall Mr. Lewis speaking to me about it. I still do not recall.

Q. Would you say he did not talk to you about it?

A. No, I certainly would not.

Q. There is a reference in the letter written by Mr. F. Goodwin Smith on May 24. Have you any recollections what that letter is about?

A. No, sir.

Mr. Isseks: I call upon counsel for Hartford and counsel for Owens to produce copies of the letter that we have been trying to locate in our files, unsuccessfully. I assume one or the other has it. Apparently Mr. F. Goodwin Smith wrote it.

Q. I show you Government's Exhibit No. 707, Mr. Belknap, which is a memorandum dated June 20, 1933, by Mr. Falck, addressed to Mr. F. Goodwin Smith, regarding the "situation between Hartford-Empire and Hazel-Atlas "relating to the arbitration, in connection with the plug feeder; and I ask you whether you saw that memorandum on or about the time it was written.

(Question read.)

[fol. 3408] Q. I should like to modify the question to read—or a copy thereof.

A. Not to my present knowledge.

Q. Would you say definitely you did not see it?

A. I said not to my present knowledge. I could not deny. I might have seen it. But I don't recall ever having seen it.

Q. Would you say you were not consulted in connection with the question relating to the arbitration under the plug feeder?

A. No, I would not recall I was consulted about arbitration of the plug feeder. As I previously told you, I did know there was a controversy going; but I would not specifically recall that I was consulted regarding that arbitration.

Q. Would you say, flatly, you were not consulted?

A. I said I have no recollection of being consulted.

Mr. Isseks: See if I can refresh your recollection.

Your Honor, at this time, I should like to offer a letter dated June 13, 1933, addressed to Mr. William E. Levis, president, Owens-Illinois Glass Company; signed "Goodwin"; stipulated as to genuineness by Owens-Illinois, at page 23 of the Stipulation.

The Clerk: Government's Exhibit No. 721.

The Court: It may be admitted.

Thereupon, Government's Exhibit No. 721 was read to the Court, by Mr. Apsey, of counsel for the government.

[fol. 3409] Q. I show you Government's Exhibit No. 721, Mr. Belknap, and ask you whether that letter, particularly

the last paragraph, does not refresh your recollection that you were consulted in connection with the proposed arbitration proceedings between Hartford and Hazel-Atlas relating to the plug feeder?

A. I might have been consulted, but I have no recollection of having been consulted, on it.

Mr. Isseks: Your Honor, I should like to show the witness Government's Exhibit No. 708; but, if I could, I should like to show him the original produced yesterday by counsel; but I believe it is not here. It might help the witness' recollection.

Q. I show you Government's Exhibit No. 708—not the original copy shown us yesterday by Mr. Sayles—it is dated June 27, 1933. It says: "Memorandum answering Mr. Falck's memorandum of June 20, 1933"—which is Government's Exhibit No. 707. It has, as the original shows, in different type, that is, in socalled ribbon type: "By C. B. Belknap." It has the stamp on it: "Received July 5, 1933, Executive Officers, A.H."—which were identified yesterday as the initials of Mr. Amory Houghton. I ask you, Mr. Belknap, whether you saw Government's Exhibit No. 708 at or about the time it was written?

A. No, I have no recollection of having seen this exhibit, [fol. 3410] prior to hearing it discussed here yesterday.

Q. Would you say that you did not give it to Mr. Amory Houghton on or about July 5, 1933? I direct your attention to the pencil notation in the upper left hand corner: "A. H."—identified yesterday as the initials, but not the handwriting of Mr. Amory Houghton.

A. Are you asking me as to whether or not——

Q. You would deny having given it to Mr. Amory Houghton, physically?

A. That I could not deny because I have no recollection; I could not affirm or deny it.

Q. Will you say you did not give it to him or send it to him in some way?

A. As far as my present recollection is concerned, I would have to say I did not.

Q. Did you write that memorandum? Somebody wrote on it, apparently at Corning, "By C. B. Belknap." Are you the author of that document?

A. No, I don't think I was. There are references in this document to Mr. Philbin's and Mr. Algeo's opinions. I

don't think that I knew Mr. Algeo. And the whole tenor of the memorandum does not seem like my memorandum. I might have taken a copy of it and handed it to Mr. Houghton as a messenger boy.

Q. You say you might have: you are reconstructing what might have taken place, in view of all the initials on it and everything else?

[fol. 3411] A. That would be the only recollection I could have of it; and that is only a surmise, and not a recollection.

Q. A surmise based on experience?

A. I would not say based upon experience.

Q. I mean general experience; I am not talking about specifically?

A. Yes, sir.

Q. As to what had taken place?

A. Yes, sir.

Q. You were seeing Mr. Amory Houghton frequently at that time, were you not, in the summer of 1933?

A. I would not say frequently; occasionally.

Q. By occasionally would you say once in two weeks?

A. More apt to be once in two months.

Q. You were seeing him more or less frequently with regard to business matters?

A. Yes, sir.

Q. Regarding Owens and Corning?

A. Yes, sir.

Q. Mr. Amory Houghton was the active head of the Corning Company, was he not?

A. He was.

Q. You were an executive and vice-president of the Owens Company?

A. Yes, sir.

(Morning recess.)

The Court: Proceed.

[fol. 3412] Q. Mr. Belknap, I show you Government's Exhibit 166, which is a letter addressed to you by Mr. Brown, and apparently furnished by Owens—I cannot tell you right now—it is in evidence—and I ask you whether you remember receiving that, a letter and a memorandum attached?

The Court: No. 161?

Mr. Isseks: No. 166, Your Honor, addressed to the witness.

A. Yes, I received that letter on July 13, 1933. I recall the subject matter of the memorandum, and undoubtedly I received the memorandum attached to the letter.

Q. That related to the other controversy between Hartford and Hazel-Atlas?

A. Yes, the one which I previously testified to as recalling about withdrawing.

Q. You mean the controversy about whether or not Hartford would get a decision within two years after a certain date?

A. My recollection is that Hazel had some provision by which they could withdraw, if certain things did not take place; and Hartford was trying to get them to change that.

Mr. Isseks: Your Honor, at this time I should like to offer, as Government's Exhibit No. 722, a memorandum to Mr. Levis, by the witness; stipulated as to genuineness by Owens-Illinois, at page 23. It is dated July 21, 1933.

[fol. 3413] The Court: It may be admitted.

Thereupon, Government's Exhibit No. 722 was read to the Court by Mr. Kramer, of counsel for the government.

Q. The question is, Mr. Belknap, whether you wrote that memorandum?

A. Yes, sir.

Mr. Isseks: At this time, Your Honor, I should like to offer in evidence a copy of a letter dated January 21, 1933, on the stationery of Owens-Illinois Glass Company, addressed to F. Goodwin Smith, signed by the witness; stipulated as to genuineness by Hartford.

Q. I ask the witness whether that is his signature on the photostat?

A. That is my signature.

Mr. Isseks: I offer it in evidence, Your Honor.

The Court: It may be admitted.

Thereupon, Government's Exhibit No. 723 was read to the Court by Mr. Kramer, of counsel for the government.

Q. Is there a mistake in the letter?

A. I think that date, 1929, would be wrong. It would seem to me it would be more 1909 or 1919, than it was 1929.

Q. Is there anything else you want to correct in the letter?

A. No. I just noticed that date.

Mr. Isseks: The original has the same date, Your Honor.

[fol. 3414] Q. It might have been a mistake in typing?

A. It probably was.

Q. Your present recollection is that the contract was much earlier that 1929?

A. Yes, that would be my recollection.

Q. You wrote the letter, did you not, sir?

A. I did.

Q. Do you remember, Mr. Belknap, that early in 1933, you were having conversations with Mr. Levis with regard to a suggested limitation on the annual production by Owens of fruit jars?

A. I remember in general the situation. I don't know whether it was discussions or memorandum.

Q. Do you remember how the question came up?

A. Yes, I think it arose from the fact that Ball Brothers, in taking a license under the Hartford patents, wanted Owens-Illinois to agree to a limitation as to their license; and that was refused.

Q. Do you remember that Ball Brothers also wanted Hazel-Atlas to take a limitation in respect of their production, namely, a limitation of to 300,000 gross a year?

A. I have a faint recollection of that part; I have a recollection of what took place in our company more fully.

Q. Where did you get the information with respect to the suggestion regarding Owens?

A. I think there was a form of contract or a memorandum suggesting that.

[fol. 3415] Q. I show you Government's Exhibit No. 189, a letter addressed to you at the Biltmore Hotel, by Mr. Carter; and I direct your attention particularly to the third full paragraph, where Mr. Carter says:

"As we understand it, the proposed limitation on O-I fruit jar production is not intended for the benefit of Hartford and is not asked by Hartford except as it may be necessary in order to bring about a situation which will enable Ball to accept a Hartford license for this line of ware."

I ask you if that refreshes your recollection that that was one of the subject matters that was under consideration at the time?

A. It was.

Q. Do you remember receiving the particular letter?

A. I do not remember getting this specific letter from Mr. Carter. He wrote a lot of letters. I cannot recall all of them; but I do recall the subject matter.

Q. It has been stipulated as a genuine document by Owens. You do not question the fact that you may have received the letter in the regular course of business?

A. No, not if there is a stipulation by Owens.

Q. Do you remember receiving a telegram on or about February 6th, 1933, either at the Waldorf-Astoria or at Vineland, New Jersey,—Government's Exhibit No. 646: two telegrams: one telegram addressed to you at the Waldorf-
[fol. 3416] Astoria; the other, addressed to you at the Kimble Glass Company, of Vineland, New Jersey, February 6th, 1933, sent by Mr. Carter to you? The one addressed to the Waldorf-Astoria was apparently received, because there is a notation on the copy furnished us by Owens that the one addressed to Vineland was undelivered. I therefore direct your attention to the one addressed to the Waldorf-Astoria, to the second part of it, reading: "Proposed Amendment received from Brown makes no provision for increase beyond hundred thousand as total production increases. Mr. Levis wants to know if this increase is being taken care of".

In that connection will you please look at Government's Exhibit No. 647, a reply which you sent to Mr. Carter. Both of these documents were furnished us by your counsel. In reply you say: "Brown understands provision will be made for increase, but I will talk with Mister Levis on my return".

Did you receive that telegram and did you send that telegram in reply?

A. I would think I did. I will say I did.

Q. Do you remember having conversations with other representatives of Hartford, and representatives of Owens, in 1929, with regard to the Knox-O'Neill situation?

A. Yes, I have a general recollection of it.

Q. What is your present recollection, sir?

A. My present recollection is that there was a Knox-O'Neill suction machine company formed. They claimed
[fol. 3417] they were going to put out a large number of suction machines. The question was whether or not Owens should participate in the purchasing of that company. I

believe I put the matter up, after conversation with someone in the east, to either Mr. Boshart or Mr. Levis—I think Mr. Boshart because I don't recall knowing Mr. Levis at that time—but the matter was turned down.

Q. I now show you Government's Exhibit No. 250, as to the admission of which the Court has deferred decision in view of objection made by your counsel. This purports to be a letter dated April 26—I believe it is—1929, written by you to Mr. Boshart; and purports to set forth in detail a conference which you had with Mr. Carter and the Hartford people in New York the day before regarding the Knox-O'Neill matter. I ask you to read it and tell us whether you wrote it?

A. Yes, I wrote that, as a confidential memorandum by an attorney to his client.

Q. It was a report of the conversation you had with people in New York, was it not?

A. Among other things, yes.

Q. You were telling Mr. Boshart what happened in New York at the conference at which were present Mr. Carter and some other Hartford-Empire people.

A. That is what the letter——

Q. That is what the letter is about?

A. Yes, sir.

[fol. 3418] Q. You were not representing the Hartford people, were you?

A. No, I was representing the Owens Bottle Company.

Q. You were telling Mr. Boshart what happened there among you people, were you not?

A. I was telling Mr. Boshart, as his attorney, about a conference that I sat in which affected the Owens Bottle Company.

Q. You were not telling him anything about what took place at the conference?

A. Let me examine the letter. (Witness does.) Yes, I would say that part of this letter clearly refers to what took place at the conference. I was telling Mr. Boshart everything I knew about the situation.

Q. You were reciting what took place, and then adding on to it some of your thoughts?

A. Yes, sir.

Mr. Isseks: Does Your Honor still desire to defer decision on this matter?

The Court: Yes.

Mr. Isseks: Your Honor, at this time I offer in evidence a letter dated January 23, 1930, written by the witness, to Henry W. Carter; stipulated as to genuineness by Owens-Illinois; a photostat of the original.

The Clerk: Government's Exhibit No. 724.

Q. I ask you, Mr. Belknap, whether that is your signature?

A. It is.

[fol. 3419] Q. You refer to certain enclosures in that document, do you not?

A. I do.

Mr. Isseks: I should like to have the enclosures marked at this time. The first enclosure is a letter which the witness wrote to Mr. Tatum of the Whitall-Tatum Company.

The Court: You want that marked separately?

Mr. Isseks: Yes, if Your Honor please, No. 725.

No. 725 is a copy of a letter dated January 23, 1930, from the witness to Whitall-Tatum Company.

No. 726 is a copy of a letter dated January 21, 1930, from Mr. F. Goodwin Smith to the witness.

I offer the three documents in evidence, Your Honor, they all having been stipuated as to genuineness.

The Court: They may be admitted.

Thereupon, Government's Exhibit No. 724 was read to the Court by Mr. Kramer, of counsel for the government.

Thereupon, Government's Exhibit No. 725 was read to the Court by Mr. Kramer, of counsel for the government.

Thereupon, Government's Exhibit No. 726 was read to the Court by Mr. Kramer, of counsel for the government.

[fol. 3420] Q. Mr. Belknap, you wrote Government's Exhibit No. 724, did you not?

A. Yes.

Q. You wrote 725 in draft form, did you not, the proposed letter to Mr. Tatum—it is stipulated as a genuine document by Owens-Illinois,—I believe it is—no, I don't know. I was misinformed. 725 there is apparently no stipulation on. I will ask the witness if he dictated that draft form and if it is not the copy he refers to in Exhibit 724?

A. I would assume that it is a copy. I haven't any definite recollection.

Q. You would not dispute it though?

A. No.

Q. What about Exhibit 726, that is a copy of a letter referred to by you?

A. I haven't seen it.

Q. 726 is a letter referred to by you in 724, the letter. You say there in view of Mr. F. Goodwin Smith's letter which is herewith also enclosed, that is 726, isn't it?

A. Yes, I would think that is the letter I was referring to.

Mr. Isseks: At this time, Your Honor, I offer as Government's Exhibits 727 and 728—727 is a letter dated January 24, 1930, written by the witness to Henry W. Carter.

Q. Is that your signature on that, sir?

[fol. 3421] A. That is my signature.

* * * * * * *

The Court: They may be admitted.

Thereupon, Government's Exhibits Nos. 727 and 728 were read to the Court by Mr. Kramer, of counsel for the government.

Q. Mr. Belknap, do you remember in 1933, in the early part, Owens obtained an option to purchase the O'Neill Machinery Company of Mr. O'Neill for $600,000?

A. I don't know as I can recall the exact date, but I think we had an option to purchase it.

Q. For some $600,000 originally?

A. I know what the transaction was that eventually took place, but as to the preliminary proceedings I would not recall the details of them.

[fol. 3422] Q. Do you know that thereafter there was another option of $500,000, but certain feeder rights were excluded and those were sold in turn to the Hartford Company with the right of Hartford to either pay a hundred thousand dollars, or to pay an annuity?

A. I recall that was the general set-up but I don't recall about the options.

Mr. Isseks: At this time I offer as Government's Exhibit 729 letter dated May 26th, 1933, addressed to the witness by Hartford-Empire Company by S. F. Parham, stipulated as to genuineness by Owens on page 23 of the Stipulation.

The Court: You say there is a stipulation?

Mr. Isseks: Yes, Your Honor, stipulated by Owens at page 23 of the Stipulation.

The Court: It may be admitted.

Thereupon, Government's Exhibit No. 729 was read to the Court by Mr. Kramer, of counsel for the government.

Mr. Isseks: At this time, Your Honor, I offer as Government's Exhibit 730, a letter on the stationery of the Hartford-Empire Company, addressed to C. B. Belknap, signed by F. Goodwin Smith, stipulated as to genuineness by Owens-Illinois at page 23 of the Stipulation, dated June 1st, 1933.

The Court: It may be admitted.

Thereupon, Government's Exhibit No. 730 was read to the Court by Mr. Kramer, of counsel for the government.

[fol. 3423] Q. Before I go any further, Mr. Belknap, with Government's Exhibit 729, do you recognize the signature of Mr. Parham?

Mr. Wall: That is stipulated.

Mr. Isseks: Also as to Mr. F. Goodwin Smith's signature?

Mr. Wall: Yes, that is genuine.

Mr. Isseks: Thank you. I now offer in evidence, Government's Exhibit 731, letter dated June 3, 1933, addressed to the witness care of Hartford-Empire Company, signed Hugh C. Laughlin, on the letter-head of Williams, Eversman & Morgan.

Mr. Middleton: To that we object on the grounds stated.

Mr. Isseks: I wish you would look at it. You can see there is nothing that could be considered confidential.

The Court: Was Mr. Belknap at that time vice-president?

Mr. Isseks: He testified he became a vice-president April 1, 1933.

Q. Is that what you said, sir?

A. That is correct.

Mr. Middleton: Mr. Laughlin was handling the legal matters at that time for Owens-Illinois, and was their regular attorney.

[fol. 3424] Mr. Isseks: There is no question about that, but I submit looking at the document there was no opinion by counsel whatever. It was a statement of fact.

The Court: I think I will overrule the objection.

Thereupon, Government's Exhibit No. 731 was read to the Court by Mr. Kramer, of counsel for the government.

Q. Mr. Belknap, do you remember some time shortly after April 9, 1924, a question came up on the Headley & Thompson applications?

A. I know it came up a long time back. I could not say whether it is 24 or 25.

Q. I show you Government's Exhibit 293, which is a letter dated June 26, 1924, addressed to you by Mr. F. Goodwin Smith, copy to Mr. Baker, stipulated as to genuineness —no, not stipulated, but it has been identified by Mr. Smith, and ask you whether you remember receiving that letter?

A. What was the question?

Q. The question was whether you received it?

A. I wouldn't have any present recollection of having received it.

Q. You would not question that you did?

A. No. No, I would neither question nor affirm that I received it.

Q. You were not representing Mr. F. Goodwin Smith at [fol. 3425] that time in connection with the Headley & Thompson matter, were you?

A. No. I would assume that I was representing Owens.

Q. At that time?

A. Yes.

Mr. Isseks: At this time I offer as Government's Exhibit 732 a letter dated July 30, 1924, addressed to the License Committee, H. H. Baker, Headley & Thompson settlement, apparently written by the witness, in the lower left hand corner, C. B. B., and on the top C. B. Belknap. Is that your writing?

A. No. I think that is Mr. Carter's handwriting. It is his. Not mine.

Mr. Isseks: It is stipulated as genuine, Your Honor. I offer it in evidence.

The Court: It may be admitted.

Thereupon, Government's Exhibit 732 was read to the Court by Mr. Kramer, of counsel for the government.

Q. Did you write that letter, sir,—it has been stipulated as genuine by your counsel?

A. If I wrote the letter it would appear from the typewritten initials down in the corner. I must have dictated it in Toledo to Mr. Carter's stenographer.

Q. Counsel has stipulated it is a genuine document written by you. You don't question having written it, do you?

A. Well, I have no recollection of it. It hasn't my signature on. I don't know how I could say that I remember writing it.

[fol. 3426] Q. I am not asking that. Do you question having written it?

A. No, I neither question nor affirm I have written it.

Q. Your counsel have stipulated you did write it?

A. If that is a stipulation I certainly can't question it.

Q. I show you at this time Government's Exhibit 278, which is a memorandum written to F. Goodwin Smith by Mr. Brown on May 6th, 1933. Have you read it?

A. Yes.

Q. Now Mr. Brown states here that C. B. Belknap tells me this morning that he talked with Levis about sharing the cost of purchasing the Headley & Thompson applications. Mr. Levis is going to share this expense with us provided the purchase constitutes a part of the general scheme which Mr. Levis has been discussing with you. I am not entirely clear whether this means merely the forming machine pool or includes the matter of unit royalty. Do you remember having a conference with Mr. Brown?

A. I remember having a conference with Mr. Brown.

Q. Do you remember telling Mr. Brown that Mr. Levis was willing to share the expense of the Headley & Thompson applications provided the purchase constitutes part of the general scheme which Mr. Levis has been discussing with F. Goodwin Smith?

A. Not in those terms. I remember having discussed this whole subject matter of our contribution to the purchase of the Headley & Thompson patent which we had an option on for a number of years.

[fol. 3427] Q. Do you remember telling Mr. Brown that Mr. Levis was willing to go ahead provided the purchase included part of the scheme which Mr. Levis had been discussing with Mr. Smith?

A. No, I don't. I am willing to tell what I do recall.

Q. I will give you plenty opportunity. You don't deny the statement made by Mr. Brown?

A. I can't deny or affirm it.

Q. Then Mr. Brown says, "If Owens joins in purchasing Headley & Thompson they want to avoid contributing directly to the purchase, but prefer to arrange it somehow as we are arranging our contribution to the O'Neill purchase. C. B.'s suggestion is that they pay their half of the purchase price for whatever suction rights there may be in Headley & Thompson, but if this does not look plausible enough because there are no Headley & Thompson suction rights, then he suggests that Owens buy something or other in the way of suction rights from us." Do you remember that?

A. No.

Q. You would not deny it?

A. I would deny it in that language because I have some recollection as to what the transaction was.

Q. We will come to the transaction. I will show you all the documents. I am asking you, sir, whether you remember telling Mr. Brown that you were willing to pay half of the purchase price for whatever suction rights there may be in Headley & Thompson, but if it does not look plausible [fol. 3428] enough because there are no Headley & Thompson suction rights then you suggested Owens buy something by way of suction from Hartford?

A. No.

Q. The O'Neill option originally was for $600,000 and then the option was changed to $500,000 and certain feeder rights were turned over to Hartford for cash or annuity?

A. As I told you, I knew what the transaction was in the final form, but I could not recall what the option was.

Q. What was the final form?

A. We bought certain assets from O'Neill for a certain sum of money, I think it was $500,000, and there were certain feeder rights and feeder fed machine rights which there was no use in our buying as obviously they would go to Hartford under a then existing agreement. So we did not buy those, but Hartford purchased them separately prior to our purchasing the other assets.

Q. You will note Mr. Brown said, "If Owens joins in purchasing Headley & Thompson they want to avoid contributing directly to the purchase, but prefer to handle it somehow as we are arranging our contribution to the O'Neill purchase". Do you remember telling him that?

A. No.

Q. Do you remember anything in regard to the third full paragraph set forth by Mr. Brown as having been stated by you?

A. No.

(Noon adjournment.)

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[fol. 3429] (At 2 o'clock p. m., Wednesday, April 9, 1941, the trial was resumed.)

Thereupon the government called as witness, S. A. Coleman, Jr., who, being first duly sworn, testified as follows:

Direct examination.

By Mr. Freed:

Q. Will you state your name?
A. S. A. Coleman, Jr.
Q. That is C-o-l-e-m-a-n?
A. That is right.
Q. Where do you live?
A. At Port Isabel, Texas.
Q. What is your present business?
A. I am plant manager of the Coastal Refineries, Inc.
Q. Plant manager for them?
A. Yes.
Q. How long have you been in that capacity?
A. For the past year.
Q. Have you had some engineering training, Mr. Coleman?
A. Yes, sir; I graduated in chemical engineering from Texas Agricultural and Mechanical College.
Q. When was that?
A. In 1927.
Q. Now, were you at any time connected with the concern that was known as the Knape-Coleman Glass Company?
A. Yes.
Q. In what capacity were you connected with that company?
A. I was president of the company.
[fol. 3430] Q. Prior to your connection with the Knape-Coleman Glass Company were you connected with some other glass company?
A. Yes, sir, I had been chief chemist for the Three Rivers Glass Company, at Three Rivers, Texas.

Q. What happened to that company?

A. The Three Rivers Glass Company went into receivership, I think, in the summer of 1932.

Q. What particular kind of glassware was the Three Rivers Glass Company manufacturing during the time of its existence?

A. They made a general line of packers' ware, and for several years manufactured milk bottles.

Q. Did they manufacture any fruit jars?

A. No, not so-called. They were fruit-packers' ware, one trip container; they weren't Mason type jars.

Q. Did they sell their packers' ware to be used as fruit jars?

A. Well, I think Mr. Ball said they did.

Q. How did you become interested in the Knape-Coleman Glass Company?

A. When the Three Rivers Glass Company went into receivership, they were closed down for a period of time and Mr. Knape and I became interested in a plant that the West Texas Utilities, during Mr. Insull's expansion had built at Santa Anna, Texas. The plant had been moved from Oklahoma down there, the plant being operated, I don't think they operated that plant probably over three or four months, and then shut it down. The Utilities decided to get out of that sort of business and the plant was closed at that time. In 1932, if you recall, that was during one of [fol. 3431] our depressions, and in that year, latter part of 1932 and in the early part of 1933, we acquired the assets of that company, known as the Texas Glass Company, and it was owned substantially by a bank in Dallas, First National Bank of Dallas.

Q. Was it at or about that time you organized the Knape-Coleman Glass Company?

A. That is right.

Q. Can you give the approximate date when that glass company was organized?

A. I would say it was probably in June or July of 1933.

Q. What was the capitalization of the company?

A. $72,000.

Q. Who, in addition to yourself, was interested in the actual operation or management of that company?

A. There was a small group of stockholders. I would say 98 percent of them from Austin, Texas, and Mrs. Ed R. Harrell being a principal stockholder.

Q. In addition to the stockholders, who, if anyone, was actively engaged in the management or operation of the Knape-Coleman Glass Company?

A. Mr. Knape and myself, and Mr. Hooper was superintendent. He had for years been employed as chief engineer, I think his title was, of Liberty Glass Company, at Sapulpa.

Q. Had Mr. Knape been employed by the Three Rivers Glass Company?

A. Yes, sir, he was mechanical engineer, had been with [fol. 3432] them for several years, and a graduate of the University of Texas.

Q. What respective offices did you and Mr. Knape have in the company?

A. I was president and general manager and Mr. Knape was secretary and treasurer. As I recall, Mrs. Harrell was vice-president at that time.

Q. You say you acquired some other glass company or some of the property of some other glass company?

A. That is right, the plant was built, the machinery and equipment in it, other than requiring maintenance and overhaul work, the plant was there.

Q. What equipment did you have in the plant at the time of its acquisition, or at the time you began operating it?

A. We had two Lynch LA type machines, and one Miller milk bottle machine, and there were two Miller feeders. Now, the lehrs, or annealing ovens, I don't recall who built those.

Q. The two Lynch machines and Miller milk bottle machine and feeder?

A. Two feeders.

Q. How many formers?

A. Well, that is forming machines. There were two Lynch LA forming machines and one Miller.

Q. Those are the forming machines?

A. Yes.

Q. And you say there were lehrs?

A. Yes, annealing ovens.

[fol. 3433] Q. What did you manufacture at this plant at Santa Anna, Texas?

A. We never manufactured anything but a line of milk bottles.

Q. That was the only item you manufactured?

A. That is right.

Q. When did you actually begin the manufacture of milk bottles?

A. As I recall it was probably in March of '34; early part of '34.

Q. And where was your market for the distribution of the milk bottles?

A. Probably 80 or 90 per cent of these milk bottles were sold within the state, I would say—Dallas, Fort Worth, El Paso and Houston areas—in the larger cities.

Q. That is, in the State of Texas?

A. In the state.

Q. Now, who at that time was your principal competitor in the State of Texas for milk bottles?

A. Liberty Glass Company.

Q. Where are they located?

A. Sapulpa, Oklahoma.

Q. Did they have a Texas plant?

A. Oh, no.

Q. How did your prices for milk bottles compare with the prices of your principal competitor, the Liberty Glass Co.?

A. They were substantially lower.

Q. Whose were substantially lower?

A. Ours. The bottles we manufactured were substan-[fol. 3434] tially lower. That can be easily seen, due to interstate freight rates, for one reason. To go west it was necessary for Liberty to traverse the entire state of Texas, to get into El Paso, and that general area. Of course, I think in the Houston area, I think probably Thatcher was shipping ware in there, but that was the lowest price section of the state. However, we were operating in the state, using raw supplies that were convenient to the plant, our own natural gas, and sand, being right at the plant, and we were on the Santa Fe Railroad, with excellent rail facilities, and good roads for trucking into North Texas, I think Dallas was 140 or 150 miles, and we were strategically located from a manufacturing standpoint. The Southern Alkali had just recently built their alkali plant at Corpus Christi, so we were naturally using everything, including labor,—and even our capital, for that matter,—from within the state.

Q. Now, Mr. Coleman, at or about the time that you began to manufacture milk bottles, did anyone call to see you to determine what type of glassware you were manufacturing?

A. Yes, probably our first callers were representatives of the Liberty Glass Company, their salesmen. They wanted to be sure we were making milk bottles, of course; and then someone from Ball Brothers; it may have been Mr. Frank Ball; I know they came down there by plane, visited with us a few hours, and when they found out we weren't in the fruit-jar business they were very happy and wished us a lot of luck.

Mr. Goodrich: If Your Honor please, I move to strike [fol. 3435] these conclusion that have gone into the past answer; for instance, the statement that Liberty wanted to know if they were making milk bottles, and, of course, his statement of the visit of Ball Brothers' representatives.

The Court: Well, the latter part, that they "seemed very happy", that may go out.

Mr. Freed: We have no objection to that part going out.

Q. Now, did anyone communicate with you shortly after you began manufacturing milk bottles, with reference to alleged infringements?

A. We had, I imagine it was rather a formal letter, mailed out by the Hartford-Empire Company, notifying us of infringements of some ten or twelve or fifteen patents, the numbers being listed in the letter.

Q. Now, after the receipt of that notice of infringement did you stop the manuacture of milk bottles?

A. Oh, no, no.

Q. Now, after you received the notice of infringement, did you, or did anyone else on behalf of Knape-Coleman Glass Company, attempt to obtain other types of equipment for the manufacture of milk bottles?

A. We did have considerable correspondence with Hartford.

Q. No, I mean aside from Hartford?

A. We didn't at that time, no.

Q. Did you later attempt to obtain another type of equipment?

A. We did later; yes, sir.

Q. Who did that on behalf of your company?

[fol. 3436] A. Mr. Knabe attempted, or he visited with Obear-Nester Glass Company, at East St. Louis, in the effort to obtain one Stuckey type feeder.

Q. Did he obtain the Stuckey type feeder from them?

A. No; Obear-Nester was willing to sell us two of these feeders but they were not willing to enter into any sort of defense so that we might use those feeders. We were principally interested, of course, in buying something we could use in operating, not in defending. We didn't have the money to enter into a long, expensive lawsuit in order to justify whether or not we could use the equipment. We were aware Obear-Nester had had some difficulties with Hartford even over their Stuckey type feeder, but we were satisfied it would do the job and willing to pay the price of it; but with this threat, or shadow, over the use of it, it looked just about as bad as to continue the use of the Miller feeder.

Q. Did you make any other attempt outside of communicating with Obear-Nester to obtain other types of equipment?

A. Frankly, I don't think so, because I don't know of anyone else in this country selling a feeder.

Q. Now, after that communication from Hartford-Empire Company, did you, or anyone else on behalf of the Knape-Coleman Glass Company, ever go to the place of business of the Hartford-Empire Company?

A. Mr. Knape, sometime in this period of operation, was invited to Hartford and did go to Hartford to discuss the [fol. 3437] possibility of getting a milk bottle license from them. However, he didn't have any success at that. They refused to accept a royalty on these feeders. We had not, up to that time, admitted we were infringing the Hartford patent.

(Last answer read at request of Mr. Goodrich.)

Mr. Freed: Now, at this time I want to mark for identification, Government's Exhibit 733, which is a letter dated June 19, 1934, addressed to Mr. George F. Collins, of the Liberty Glass Company, by A. T. Safford, Jr., secretary of the Hartford-Empire Company, and stipulated as genuine by Hartford-Empire on page 25 of the stipulation.

The Court. It may be admitted.

Mr. Emery: The usual objection.

The Court: Yes.

(Government's Exhibit 733 read by Mr. Freed.)

Mr. Freed: Now, at this time, if the Court please, I likewise want to have marked for identification, Government's

Exhibit 734, a letter which is on the letterhead of the Liberty Glass Company, dated June 21, 1934, addressed to the Hartford-Empire Company, attention of A. T. Safford, Jr., and signed Liberty Glass Company, George F. Collins, president, and stipulated as coming from the files of Hartford-Empire, on page 25 of the stipulation. Is that correct, Mr. Wall?

Mr. Wall: I will take your word for it.

Mr. Freed: It is so marked.

We offer it in evidence.

[fol. 3438] The Court: It may be admitted.

Mr. Goodrich: Usual objection.

The Court: Over objection.

(Government's Exhibit 734 read by Mr. Freed.)

Mr. Freed: Now, likewise at this time, if the Court please, I would like to have marked for identification as Government's Exhibit 735, a letter dated September 13, 1934, addressed to Mr. George F. Collins, president of the Liberty Glass Company, Sapulpa, Oklahoma, and it is stipulated as genuine from the files of Hartford-Empire on page 26 of the stipulation. We offer it in evidence.

Mr. Goodrich: Who is the author of the letter?

Mr. Freed: A. T. Safford, Jr.

Mr. Goodrich: Usual objection.

The Court: It may be admitted, over objection.

(Mr. Freed reads Government's Exhibit 735.)

Mr. Freed: Now, if the Court please, I likewise would like to have marked for identification, as Government's Exhibit 736, a memorandum dated September 15, 1934, from A. M. Pease to F. G. Smith, and which has been stipulated as coming from the files of Hartford-Empire. It does not show whether it was stipulated as genuine or not. Stipulated as from the files of Hartford-Empire. We offer it in evidence, at this time.

The Court: It may be admitted.

(Government's Exhibit 736 read by Mr. Freed.)

Q. Now, Mr. Coleman, were you able to sell all the milk [fol. 3439] bottles that you manufactured at your plant at Santa Anna?

A. We sold substantially all of them. You have your fluctuations, or your periods in there, you see our sales

were hard, or handicapped, rather, by the very fine connection between my plant and the Liberty Glass Company, as evidenced in this letter. You see, we were going out of business. This was circulated to the trade that we were operating illegally, and soon we were going to shut down. It was very difficult to get large jobbers to buy your merchandise if they think you are here just for a few minutes. We had that thing to contend with continually, because here were the representatives of the Liberty Glass Company telling our jobbers we weren't going to be in business, not because our ware wasn't of good quality, but because we were going to be in a patent suit, we were using equipment we couldn't continue to use. So, I say, our sales were quite a problem.

Mr. Foster: I object to that statement and ask it be stricken, on the ground of hearsay.

The Court: How did you arrive at this opinion, Mr. Coleman, that you have just stated? Did you participate in any conversations?

The Witness: I participated in the sales. In fact, most of my time was spent in saleswork.

The Court: Is this direct information you had with reference to the statements, you say, of the Liberty salesman, or was it related to you by someone else?

The Witness: No, I heard that directly; and may I en- [fol. 3440] large on that a little further——

The Court: Just a minute. How do you mean you heard it directly? From whom?

The Witness: From jobbers. At the moment I don't recall the jobbing connections in San Antonio, but after considerable effort the jobber there was persuaded to switch to our line of ware, and we were continually having difficulty maintaining that connection, because somebody from Liberty would call on them and tell them our production was a temporary affair.

The Court: How do you know that?

The Witness: Well, the jobber there told me. That is one instance, but there were several.

The Court: Very well. Motion will be overruled.

Mr. Foster: Exception.

Q. Now, Mr. Coleman, did you yourself ever visit Hartford?

A. Yes, I was up there one time.

Q. Did you go there at your own expense or at somebody else's expense?

A. No sir, I happened to be in Washington and they invited me to come up to Hartford.

Q. Do you recall about when that was?

A. I think in January or February of 1934. I am not sure of the date; it was in the winter.

Q. Of 1934?

A. Yes sir.

Q. Did you go there alone or somebody accompany you from your organization?

[fol. 3441] A. I went alone.

Q. Whom did you meet there?

A. I think I met all of them—Mr. Smith—I recall Mr. Smith, Mr. Pease, Mr. Safford,—there were several others I don't remember. I spent quite a while and we had quite a visit there in Hartford that day, I was just there one day.

Q. Did you meet them all at one time or separately?

A. I met them all at one time. I had sent Mr. Knape up there the year before and he had a nervous breakdown afterwards; so, of course, my health was all right and I want to keep it that way.

Q. Well, will you state to the Court the conversation that occurred, or took place there, at Hartford?

A. Well, our interest was solely this: we did not intend to be diverted into a line of packers' ware. We had been employed by another company down there and knew what happened to you when you got off into packers' ware; but there was no one in the state manufacturing milk bottles, it was a very profitable item. If it hadn't have been we would never had this trouble. I went there with the purpose, of course, of trying in some manner to obtain a license to manufacture milk bottles. Now, so far as I recall, we weren't given any encouragement at all. That is, it just couldn't be done; there was no way to obtain a milk bottle license. I asked Mr. Smith pointblank, not only at that time but several times during the meeting, if it wasn't true Liberty Glass Company had an exclusive license, but Mr. [fol. 3442] Smith said "No". But my inference was that it did. I couldn't see any reason why our money wasn't as good as the Liberty Glass Company's, if it was a strictly royalty proposition.

Mr. Goodrich: I move to strike the inferences. I move to strike out the latter part of the answer where he was speaking of the profit in the milk-bottle business, and the conclusion they couldn't get the license.

The Court: Yes, I recall that. That part may go out, that he recognized—I forget just what the clause was.

Mr. Goodrich: I believe it was, "of course, that is why it was difficult to get", or words to that effect.

The Court: I think that may go out. And then the last phrase. It may go out from there on.

Mr. Freed: I am afraid I will have to ask Your Honor what part of it does go out.

The Court: Read the answer.

(Reporter read answer, and the following part of answer stricken out): "If it hadn't been, we would never had this trouble", and "But my inference was that it did. I couldn't see any reason why our money wasn't as good as the Liberty Glass Company's, if it was a strictly royalty proposition."

Mr. Freed: Now, may I ask this question?

The Court: All right, proceed.

Q. Did you tell either Mr. Smith, or anybody at that con-[fol. 3443] ference, the things you have related: that is, did you ask Mr. Smith, or say to Mr. Smith, "Isn't my money as good as anybody else's", or words to that effect?

A. I am sure it was brought out during the conversation. Simply, without reading lots of inferences in it, we had a plant we were running and wanted to live peaceably with everybody, and we wanted, if at all possible, to obtain a license to make milk bottles, not something else but milk bottles. We were trying to find out why we were denied this right.

* * * * * * *

[fol. 3444] Q. Have you related everything that was said at that conference?

A. Only, of course, that there was a general discussion, as I stated a while ago, as to why we couldn't obtain this license. I would say we were never given anything concrete or satisfactory. It was just a case of looking out the window. You can't have one—when this was brought up; of course, it is only natural, financially we weren't able to

take it, to get a license with the Hartford-Empire Company, didn't have a lot of money. But my position was at that time that that hazard and risk was our own. We could have easily paid for the feeders and paid, I think, the royalty. And the impression I got at Hartford at that time [fol. 3445] was that the Hartford-Empire Company was——

Mr. Goodrich: If Your Honor please, I am sorry to do this.

The Court: Yes, counsel will confine the witness to the conversation he had there, not what impressions or inferences were gathered as the result of the conference.

Mr. Goodrich: I move to strike the entire answer.

The Court: It may be stricken.

Q. As the Court has indicated, you are not permitted to testify to any impressions. I asked you the question, and will you try to recall what was said rather than the impressions you obtained?

A. Well, during the conversation we were told, or I was told, we couldn't have this milk bottle license. That we had built—and this is my reaction—I felt very bitter——

The Court: That is what you cannot tell, is your reaction. What was said by them and what was said by you?

Q. What did you say and what did they say. That is about all you can testify to, instead of testifying your impressions or how you felt.

A. Well, they told me that they wouldn't give any milk bottle license. I knew, when they told that to me, my plant would have to shut down. I told Mr. Smith that without this license, and a lawsuit, they were putting us out of business. The building and starting of this plant necessitated quite a personal sacrifice. We all had lost that money in it, and, frankly, I didn't—and I don't—understand that——

[fol. 3446] Q. You cannot testify to that.

Mr. Goodrich: I move to strike that, if the Court please, from where he left the answer, starting back about the plant. I didn't understand that was told.

The Court: I think he included that in his conversation with Mr. Smith; where he said, "frankly", beginning there, that may go out.

Mr. Goodrich: Would Your Honor permit Mr. Freed to ask him if he intended that to be part of the conversation?

Q. Did you say that to Mr. Smith or anyone else at Hartford, what you started to relate now?

(Previous answer read.)

The Court: Is that all the conversation you had with Mr. Smith?

Q. Was that detailing the conversation you had with him,—what you said to him?

A. I think it is, the substance of it.

Q. Now, did you return to your plant from Hartford, to the Knape-Coleman Glass Company?

A. Yes, sir.

Q. And did you stop manufacturing milk bottles?

A. Oh, no, no.

Q. Were you sued by Hartford-Empire Company for infringement?

A. Yes, sir.

Q. How soon after your trip to Hartford were you sued?

A. That suit was entered in the spring of 1934, March or April, I think; somewhere in there.

[fol. 3447] Q. And when, if at all, did that case come up for trial in the court, how soon after it was filed?

A. I believe we were able to obtain—that Judge Burch set the case back some six or eight months and it was in the following spring before the case came to trial in San Angelo, Texas.

Q. Did you go there for the trial?

A. Yes, sir.

Q. Who represented Hartford at the trial?

A. I don't know. I think possibly the entire legal staff of the Hartford-Empire.

Mr. Goodrich: I object to that and move it be stricken.

The Court: Yes, he may confine himself to the ones he knows.

The Witness: Well, I am trying to recall the men that were there. Mr. Brown was there. I believe Mr. Belknap was there, as I recall, and numerous others. There were men from other plants, Hartford licensees that were present, but I don't remember their names.

Mr. Goodrich: I move to strike that.

The Court: The Court will not strike that.

The Witness: I will say this, it is quite impossible for me to know or meet all of them that were there.

Q. Did you hire counsel to represent you?

A. Yes, sir, we had, I think possibly—well, we had Mr. Schley, from Dallas, the only patent attorney in North Texas.

Q. And did the case go to trial?

[fol. 3448] A. No, sir; on the day it was set, why the odds were such we decided to try to settle it, if we could, without carrying it to trial, and the expense of litigation through not only the lower court but other courts; and we were able to settle it that way.

Q. What were the terms of the settlement, if you know?

A. That at the end of the six-month period we were to deliver the two Miller feeders to the Hartford-Empire Company. During this six-month period we had what amounted to a limited license on milk bottles. At the end of that period of time we agreed to stop using the feeders and ship them to Hartford, and they, in turn, pay us $10,000.

Q. Now, how soon after this settlement was arrived at did you sever your connections with the Knape-Coleman Glass Company?

A. Probably some three or four months later; it was before this six-month period expired.

Mr. Freed: Now, if the Court please, may I request counsel for Hartford-Empire whether or not they will stipulate two letters which they have delivered to us in the last day or two: one on the letterhead of the Knape-Coleman Glass Company, dated October 21, 1935, addressed to Mr. A. M. Pease of Hartford-Empire Company. Is that stipulated as genuine from your files?

Mr. Goodrich: Yes, it is.

Mr. Freed: And may I likewise ask whether you will stipulate the letter dated October 24, 1935, addressed to [fol. 3449] Mr. G. R. Haberlin, president of the Knape-Coleman Glass Company, and signed by A. M. Pease of the Hartford-Empire Company, which was likewise delivered to us a day or two ago, is genuine, from their files? That is a carbon copy, rather, of the letter?

Mr. Goodrich: We stipulate as to the genuineness of both of them, and as coming from our files; but I think it

fair to warn you at this time we shall object to the use of these by this witness, for the reason his connection with the company was severed prior to the date of the letters.

Mr. Freed: We are not tying them up, or asking the witness anything about them. I would like to offer first this letter of October 21, 1935, as Government's Exhibit 737.

The Court: It may be admitted.

(Government's Exhibit 737 read by Mr. Freed.)

[fol. 3450] Mr. Freed: Your Honor, at this time I should likewise like to have marked for identification, as Government's Exhibit No. 738, a carbon copy of a letter dated October 24, 1935. I should like to offer it in evidence.

The Court: It may be admitted.

Thereupon, Government's Exhibit No. 738 was read to the Court by Mr. Freed, of counsel for the government.

Mr. Freed: No further questions.

The Court: You may cross-examine.

Cross-examination.

By Mr. Goodrich:

Q. Mr. Coleman, what were your duties at Three Rivers as a chemist?

A. They were the normal duties of a chemist, overseeing —at the time I was at Three Rivers, we had a crew of Mexicans that mixed the raw materials by hand, and we had a small laboratory there. I looked after the testing of the finished ware, glassware.

Q. Could it be merely said that you superintended the mixing of the batches?

A. I would say that is essentially correct, yes.

Q. And in the laboratory you tested the finished ware,— and did anything else?

A. As far as the testing of the finished ware, as you probably know, it was rather primitive at that time. The general testing was hot water testing at various temperatures; [fol. 3451] shock test, I believe it is called.

Q. I don't know, but I don't think that is material; what I am getting at is this: What active part did you have in the production of ware in the Three Rivers plant? Were you on the shop floor?

A. No, sir.

Q. Were you running a machine?

A. Probably I can answer your question more direct. I looked after the batch operation; testing raw materials; mixing; and oversaw the operation of the furnace and the testing of the finished ware.

Q. You checked the temperatures on the furnace, did you?

A. I did.

Q. Throughout the run?

A. That is right.

Q. Did you have anything to do with the mechanics of the machines?

A. No, sir.

Q. So you knew nothing of machine operation, except as a casual observer in the plant?

A. That is right.

Q. Did you have anything to do with the selling end of the business?

A. No, sir.

Q. So you had no experience with the market there?

A. That is true.

Q. Did you have anything to do with the business office end of the plant?

[fol. 3452] A. No, sir.

Q. So you had no experience in running a glass business from that angle?

A. That is right.

Q. What about Mr. Knape? What was his experience in the Three Rivers plant,—so far as you know, of course?

A. He operated a milk bottle machine, an LA machine, there for quite a period of time when he first went to work at Three Rivers. Later he went into the mold shop and was for some time mold shop foreman there.

Q. So that he did have some actual shop floor experience in the Three Rivers glass plant?

A. Yes, sir.

Q. And the two of you came to Santa Anna, and started up the Knape-Coleman Company?

A. That is right.

Q. You said you had $72,000 capital, I believe. How was that divided into preferred stock and common stock?

A. As I recall, there was $60,000 worth of preferred stock, and $12,000 of common stock.

Q. And that was issued, was it not, one-third to you and one-third to Mr. Knape and one-third to Mr. Foster, for the assets turned in?

A. That is right.

Q. Was any other stock ever issued by the company?

A. You mean, in addition to this 72,000 dollars?

Q. In addition to the 72,000?

[fol. 3453] A. No, not to my knowledge.

Q. How did you get any other stockholders? Did you gentlemen sell your stock to outside people?

A. No, we donated our stock back into the company; that stock that was sold, in some instances most of it was donated back in. The total amount that were donated back in, I don't recall.

Q. That is, the whole $72,000 was taken out and then put back in?

A. No, it was preferred stock and some of the common donated back in, in order to have some stock.

Q. To sell to the public?

A. That is right.

Q. Let us see if we can be exact. Let us take your stock: one-third of the 60 would be $20,000 of preferred you got; and one-third of 12, would be $4,000, of common. How much of that did you donate back into the company to be sold to outsiders?

A. I know what you are trying to bring out here.

Mr. Goodrich: I respectfully ask the Court to admonish the witness to answer my question.

The Court: Just answer the questions that counsel puts to you.

The Witness: What was the question?

Q. The question was——

Mr. Goodrich: Your Honor, may the last answer be [fol. 3454] stricken?

The Court: Yes, it may be stricken.

Q. The question was: How much of your $24,000 of stock did you donate back to the company for sale to outsiders?

A. I don't recall my pro rata share of it.

Q. Then, were there, at more or less regular periods, calls on you three original stockholders for donations of stock back to the company? Is that what you mean by pro rata share?

A. That is right. We had an understanding between Mr. Knape, Mr. Foster, and myself that that would be the source of stock that was to be sold; it would come from the part which had been issued originally to us individually.

Q. And when you found a purchaser for stock, there was an arrangement amongst the three of you as to how that order would be filled?

A. As I recall—Mr. Knape was secretary and treasurer of the company—I don't recall the details right now; but I think we turned all that stock back in. I know I did, personally. And it was more or less of a loose arrangement as to what we were to have in the end; that is, what stock would be left. We had no idea what it would require to carry the company along for some three or four years, in the way of additional capital.

Q. You mean the amount of it?

A. Yes, sir.

[fol. 3455] Q. And you had no idea of the stock you could sell to the public, did you?

A. Oh, no.

Q. When did you first donate any of your stock back?

A. I don't recall.

Q. Can you make an estimate? Was it early in 1934? Was it in 1933?

A. I don't know, without having access to the stock books.

Q. You cannot say at this time how much it was?

A. I don't recall.

Q. Can you say at this time how long it was before all your stock had been turned in to the company and resold to outsiders? I am speaking now of your own personal stock?

A. I don't remember at the present time.

Q. Then let me ask it this way: Had you turned it all back in before you left the company?

A. Before I left the company, yes.

Q. So that it must have been in that period?

A. That is true. I thought you wanted the exact date.

Q. I would like the exact date; but if you cannot give it to me, you cannot give it to me. You used the words "donate back"; did you get anything for your stock when you turned it back into the company?

A. No, sir.

Q. You yourself got nothing?

A. No, sir.

[fol. 3456] Q. But originally you three gentlemen got all of the stock in exchange for the assets you turned in?

A. That is true.

Q. What were the assets you turned in?

A. It is a list of physical assets of the one-time Texas Glass Company.

Q. I do not mean a long list: you turned in plant, machinery, equipment, real estate, and that is all; was it not?

A. That is right.

Q. At what value was that set up on your books, approximately, do you remember?

A. I don't remember.

Q. What your books showed as invested capital on those assets?

A. Prior to the organization of the company, an audit was conducted by a firm in San Antonio. I think a copy of that audit is on file with the Secretary of State of Texas, if you would like to examine it.

Q. Have you any approximate idea as to the amount at which your assets were set up on the books? Can I help you this way: Was it more or less than the capital stock issued?

A. I think it was more. I was going to say 80 or 85 thousand dollars.

Q. I suggest to you that your building was set up on the books at $7,810; machinery and equipment, $72,117; your [fol. 3457] land, $7,500; your spur tracks, $1,965; making a total—I have left off the cents as I read them—making a total of $89,393.66. Does that sound correct to you?

A. I would say it does.

Q. You say those are the probable figures on the books?

A. Yes, sir.

Q. All that property set up at $89,000 you purchased from the First National Bank of Dallas, did you not?

A. Yes, sir.

Q. How much did you pay back for it?

A. At the time we purchased that property, I think 18 or 20 thousand dollars was the obligation we assumed.

Q. I suggest to you that it was 15,200. Does that sound right?

A. There was some back interest; in fact, at the time we purchased it, we had to pay several years' interest, and

lots of other stuff there. If you check the record, it will run in the neighborhood of $18,000.

Q. But the basis of the mortgage was 15,000?

A. That is right.

Q. Except for the interest, that is all you paid for the properties from the bank?

A. Yes, sir.

Q. How much of that did you pay in cash?

A. I don't recall. It was not a large sum at all. It was several thousand dollars.

Q. I suggest to you $1200; does that sound right?

[fol. 3458] A. It could have been, yes.

Q. You do not now remember?

A. I am speaking of something a number of years old, if you will pardon my memory.

Q. So that for $1200, and the balance of the mortgage, being $14,000 plus what interest you say was back, you took over these assets, which went into your books at $89,000; and against which capital stock was issued in the amount of $72,000; is that correct?

A. That is right.

Q. That was the financial set-up of the Knape-Coleman Company?

A. Yes, sir.

Q. When you started out, Mr. E. E. Foster was your vice-president, was he not?

A. I believe he was.

Q. You were president?

A. That is true.

Q. Mr. Knape was secretary and treasurer, as you said?

A. That is right.

Q. Who were your directors?

A. Dr. Warner E. Gettes was one of the directors. Mr. Charley Lockhart, treasurer of the State of Texas, was one of the directors.

Q. Mr. F. W. Schroeder?

A. That is right—vice-president of the Utility Company.

Q. Mr. Henry Brooks?

[fol. 3459] A. Yes, sir.

Q. Dr. A. Valance?

A. That is correct?

Q. How much stock did Mr. Lockhart buy in the company?

A. It was just a small sum; I don't remember; two or three hundred dollars.

Q. Less than $500?

A. I believe it was.

Q. What about Mr. Schroeder—the same?

A. No, Mr. Schroeder had, I believe—I believe they held $10,000 worth of stock in that company.

Q. You say "they"; you mean Mr. and Mrs. Schroeder?

A. Mr. Schroeder was holding it for the West Texas Utilities.

Q. You know that of your own knowledge?

A. Yes, sir.

Q. How was the stock certificate issued?

A. To Mr. Schroeder.

Q. How do you know he was holding it for the West Texas Utilities?

A. You mean evidence by a written contract?

Q. Yes.

A. That did not exist.

Q. So your statement was entirely voluntary, and an assumption, was it not?

A. No, if I know it, it could not be an assumption.

Q. Do you know it?

[fol. 3460] A. It is irrelevant anyway. I do not have any contract that states that, no.

Q. Very well. What about Mr. Brooks? How much stock did he own?

A. Probably $500 worth. I am not sure.

Q. Mr. Gettes?

A. A thousand or $1500.

Q. Dr. Valance?

A. The same amount.

Q. That is, 1,000 or $1500?

A. 1,000 or 1500 dollars.

Q. How much stock did you yourself pay for in cash and hold?

A. I did not pay for it in cash.

Q. You had no stock?

A. I purchase no stock. I had spent a year and a half in the organization of the company; that is, all of the

pre-organization expense, Mr. Knape and I share—principally myself.

Q. Let us look at that. What did you have for pre-organization expense? You had to get a certificate from the state?

A. It is expensive.

Q. How much did it cost you?

A. It cost me about $3,000 a year to live.

Q. It costs all of us.

A. That is what I was working at.

[fol. 3461] Q. Please confine yourself just to the answer, if you please. How much did the pre-organization expense of the Knape-Coleman Company cost you?

A. Out of pocket expense, expenses of traveling—you know Texas is a large state.

Q. I know Texas is a large state. Did you have to travel all over Texas to organize this company, the whole equipment of which was held on a $15,000 mortgage by the Dallas Bank?

A. It required quite a bit of traveling.

Q. Where did Mr. Lockhart live? Let us see if we can get at it that way.

A. Austin.

Q. How far is Austin from Santa Anna?

A. Approximately 200 miles.

Q. Where did Mr. Schroeder live?

A. Abilene.

Q. He was not situated in Austin?

A. No, their office is in Abilene.

Q. How far is Abilene from Santa Anna?

A. 100 or 150 miles.

Q. Where did Mr. Brooks live?

A. Austin.

Q. And Mr. Gettes?

A. Austin.

Q. And Dr. Valance?

A. Austin.

[fol. 3462] Q. Where were you at the time after you left Three Rivers—Austin?

A. I lived in Austin, Brownwood, San Antonio; part of the time, in Dallas.

Q. What traveling you had to do, you did in your own car?

A. That is right.

Q. Let us come back. How much did you, out of your own pocket, spend in pre-organization cost of Knape-Coleman Company?

A. The figure I have had in my mind always was right at $3,000.

Q. In other words, you want the Court to believe it cost you $3,000 to organize this Knape-Coleman Company, having a capital stock of $72,000; all of which was issued to the three organizers in exchange for assets they turned in, and for which they paid $1200 cash, and assumed a $14,000 mortgage?

A. You were speaking of my expenses.

Q. Yes.

A. There were two other gentlemen interested in this.

Q. Did they each spend $3,000?

A. I don't know. Mr. Foster spent quite a bit of money; just how much, I don't know.

Q. I will be very glad to have your estimate of what the three of you spent in pre-organization expenses of this company.

A. I would not hazard a guess. I will be glad to get it to-
[fol. 3463] gether for you. I am sure Mr. Foster could furnish the information.

Q. Unfortunately, he is not here. Unfortunately the Court goes on. You yourself spent $3,000?

A. That is my guess, yes.

Q. You think that Mr. Knape spent a substantial amount?

A. I am not going to make a statement regarding Mr. Foster and Mr. Knape.

Q. I think you have already made a statement. You have already said, I believe, they spent substantial amounts; and Mr. Knape spent a lot?

A. Yes, sir.

Q. Do you wish to withdraw the statement? You may, if you like.

A. I should like to withdraw the statement as to what they spent; I don't know.

Q. You do know they spent something?

A. Yes, sir.

Q. You do think that they spent substantial amounts?

A. Yes, I think they did; I am sure they did.

Q. Those amounts were spent in addition to the $3,000 you estimate you spent yourself?

A. Yes, sir.

Q. What did you get for your money? What sort of plant did you have out there? When was it built, do you remember? Let us take the buildings first. What did you have for buildings?

[fol. 3464] A. There was a new warehouse. There were other structures. You see, some of this equipment was moved from Oklahoma down there. I was there——

Q. I am sorry. I must stop you again. Answer my question as best you can. What buildings were at the place when you took it over?

A. There was a building over the process area.

Q. By that you mean the shop, what I have been calling the shop floor?

A. I should say the melting tanks and lehrs.

Q. Machines; were they in there too?

A. Yes, sir.

Q. In other words, when you use the term "process area", you mean——

A. The building.

Q. Where the glass is made?

A. That is right.

Q. Go ahead.

A. A warehouse and a machine shop.

Q. Was the machine shop attached to the process building?

A. It was an independent structure.

Q. How far distant?

A. 50 or 75 feet.

Q. Was the warehouse also separated from the process shop?

A. No, it was connected to it.

Q. That was attached?

[fol. 3465] A. Yes, sir.

Q. How big was your building over the process area approximately?

A. I don't remember the dimensions.

Q. Let us see what you had in there. You had one tank in there?

A. Yes, sir.

Q. You had one feeder set up?

A. Yes, sir.

Q. What else?

A. You had your housing over your lehrs, your storage area back of your furnace.

Q. Could you estimate it as compared to this courtroom?

A. No, it was much larger than this courtroom.

Q. What was the condition of the building?

A. It was in a reasonable state of repair.

Q. You did have to overhaul and repair, to some extent, did you not?

A. Some work; it was a corrugated iron structure.

Q. Sides and a roof?

A. That is right.

Q. So you had to do some patching, and that is about all?

A. I think so.

Q. How about the warehouse?

A. The warehouse was new; that had been built with a new iron flooring and material.

Q. Was that frame?

[fol. 3466] A. It was frame, with a corrugated iron roof.

Q. How big was the tank?

A. I don't remember the dimensions of that tank.

Q. Can you give us some idea in content?

A. I think the capacity of that tank was some 25 tons a day.

(Afternoon recess.)

The Court: You may proceed.

Q. All your trips to Hartford, Mr. Coleman, both you and Mr. Knape were paid for by the Hartford-Empire Company, were they not?

A. Yes, sir.

Q. On the occasion you mentioned, when you had a conference with Mr. Smith, did you tell him your company had started business with the payment of $1200 cash on its properties?

A. We were not questioned regarding our finances in detail at that meeting.

Q. So your answer to my question is no?

A. Yes, sir.

Q. We were talking about your plant, and I think about the tank. You said it was a 25 ton capacity?

A. As I recall.

Q. How many openings?

A. Three.

Q. What condition was it in?

A. Only fair; I would say fair.

[fol. 3467] Q. It had to be rather extensively repaired before you started up?

A. We did considerable work on it.

Q. How much did it cost you, about, do you remember?

A. I don't recall.

Q. And then for the machines: I think you said you had one Miller milk machine, two Miller feeders, and two LA Lynch machines?

A. Yes, sir.

Q. Did you have a Bethel feeder also?

A. Not complete; there were parts for some other type feeder there; but I don't know.

Q. It might have been?

A. Yes, sir.

Q. You never used it?

A. No, sir.

Q. How many of the Miller feeders were in use?

A. We used one of them.

Q. And never set up the other one?

A. No, sir.

Q. Where did those machines come from, do you know?

A. I don't know.

Q. You don't know where the bank acquired them?

A. They acquired them from the Texas Glass Company.

Q. Where did the Texas Glass Company acquire them?

A. The plant was moved from somewhere in Oklahoma.

[fol. 3468] I am not familiar with the background.

Q. I suggest that they obtained them from the Magnolia Glass Company, is that right?

A. I don't know.

Q. You never did know where they came from?

A. No, sir.

Q. When you were at Three Rivers, Three Rivers had a license from Hartford, did it not?

A. Yes, sir.

Q. Did you make any investigation of the patent situation before you bought these machines?

A. No, no detailed investigation.

Q. What investigation did you make?

A. To answer the question, it was my understanding at that time that the Miller feeder, so far as we knew, had not been in litigation with Hartford's patents.

Q. Where did you get that understanding? From whom did you acquire it—Miller?

A. No, we were under—I believe Mr. Hoopes; it was through Mr. Hoopes, who came down to operate the plant for us.

Q. You yourself made no investigation, Mr. Coleman?

A. No, we bought the equipment——

Q. Speaking of you personally?

A. No, sir.

Q. So far as you know, did Mr. Knape make any investigation as to the patent situation covering these machines? [fol. 3469] A. I don't know whether he did.

Q. Do you know whether Mr. Foster did?

A. I am sure Mr. Foster did not.

Q. Do you recall whether Mr. Hoopes made any report to you personally as to the availability of these machines for use?

A. It was Mr. Hoopes' opinion that we could use the equipment without any difficulty.

Q. He stated that to you, did he not?

A. As I recall, yes.

Q. When you use the word "difficulty", you mean involvements with infringement matters?

A. That is right.

Q. And not the mere physical use of the machine?

A. That is right.

Q. Of course you never made any inquiry of Hartford until you heard from Hartford the first time?

A. That is right.

Q. I show you a letter of June 9, 1934, which I will ask to have marked, addressed to your company, from the Hartford-Empire Company.

The Court: What number do you give that?

The Clerk: H-5053.

Mr. Goodrich: I will state to counsel that this is from our files. I think you have seen it.

Mr. Freed: There is no question as to the authenticity [fol. 3470] of this letter.

Mr. Goodrich: Thank you.

Q. I will show it to the witness, however, and ask him if that is an infringement notice; or rather, ask him if that is a letter he received from the Hartford-Empire Company?
A. Yes, sir.
Q. And this is the first knowledge you had personally that the machines you had purchased were covered by patents owned by the Hartford Company, is that right?
A. That is true.

Mr. Goodrich: I offer that document in evidence, if Your Honor please.
The Court: It may be admitted.

Q. You replied to that letter, did you not, Mr. Coleman?
A. I think I did.

Mr. Goodrich: I should like to have marked a letter of June 14, 1934, addressed to the Hartford-Empire Company, from the Knape-Coleman Company.
The Clerk: Exhibit H-5054.

Q. I show this to the witness, and ask you, Mr. Coleman, whether that is a letter you wrote to Hartford?
A. I assume it is.
Q. Your answer is yes?
A. Yes, sir.

Mr. Goodrich: I offer that in evidence, if the Court please.
[fol. 3471] Mr. Freed: Would you read this letter?
Mr. Goodrich: I will read them both, in just a moment, Mr. Freed.
I asked to have marked at this time, a letter of June 19, 1934, addressed to Mr. Coleman, from the Hartford-Empire Company; and I hand a copy to the Court.
The Clerk: Exhibit H-5055.
Mr. Goodrich: I offer at this time Exhibits H-5053 and H-5054. The Clerk tells me they have not been admitted. I thought they had been.
The Court: They may be admitted.

Q. Mr. Coleman, I show you Exhibit H-5055, and ask you if that is a letter you received in response to your letter to Hartford?
A. Yes, sir.

Mr. Goodrich: I offer Exhibit H-5055.

The Court: It may be admitted.

Mr. Goodrich: I should like to have these read, at this time.

Thereupon, Exhibit H-5053 was read to the Court by Mr. Carlisle, of counsel for Hartford-Empire Company.

Thereupon, Exhibit H-5054 was read to the Court by Mr. Carlisle, of counsel for Hartford-Empire Company.

Thereupon, Exhibit G-5055 was read to the Court by Mr. Carlisle, of counsel for Hartford-Empire Company.

Q. So that very early in 1934, you were advised that Hartford claimed your machines infringed their patents?

[fol. 3472] A. Yes, sir.

Q. But, as you testified, you did not stop using the machines?

A. No, sir.

Q. You kept right on infringing?

A. I don't believe we admitted infringement at that date.

Q. Did you ever deny it?

A. I don't have the files of the company; I don't know whether we did or not.

Q. To the best of your recollection, did you ever deny infringing Hartford patents?

A. I think we did, yes.

Q. You don't know when nor where?

A. No, sir.

Q. But your best recollection is now you did deny infringement?

A. Yes, sir.

Q. After you denied it, did you make investigation into the patents or into the patent law, and change your position in the matter?

A. We hired a patent attorney.

Q. And took counsel of him?

A. Yes, sir.

Q. But meanwhile you kept on using the machines?

A. That is true.

Q. Paying no royalties?

A. That is correct.

[fol. 3473] Q. And knowing that Hartford claimed you infringed?

A. That is right.

Q. At the end of July or early August, 1934, Mr. Hatch, of the Hartford-Empire, came to your plant and met you there, did he not?

A. Yes, as I recall.

Q. Do you remember the conference with him?

A. Yes, sir.

Q. Who was there besides Mr. Hatch and yourself?

A. I should like to correct that statement. I remember the conference. I remember Mr. Hatch was down there. But I don't remember the details of the discussion.

Q. Do you have any recollection of the date?

A. You might repeat that.

Q. I suggest to you it was August 6th, 1934.

A. I don't recall the discussion.

Q. It may have been July 30 or 31, 1934?

A. It could have, yes.

Q. You think it could have been about that time?

A. Yes, sir.

Q. Did not Mr. Hatch tell you at that time you were infringing by using the machines?

A. I am sure he did, yes.

Q. Do you recall whether or not you denied it at that time?

A. I don't recall the conversation.

Q. Did you not at that conference make a promise to Mr. Hatch to cease using the machines on a certain date? [fol. 3474] A. No, I don't think we ever made any such promise as that.

Q. You did not make any such agreement?

A. No, sir.

Q. You don't remember that at all?

A. No, I am quite sure.

Q. I suggest to you that Mr. Hatch, on behalf of Hartford, gave you permission to continue the use of those machines until September 6th, 1934, conditioned upon your agreement to stop the use of them at that time?

A. No, to my knowledge I was never any party to any such understanding.

Q. Can you deny any such agreement was made, or is it that you just cannot recall it?

A. Will you state what this agreement was I made, again, please?

Q. Yes; you were given permission to continue the use of the machines until September 6th, 1934, on condition that

on that date you would cease using the machines,—certainly for milk bottles?

A. Is there any further background? To me there seems to be no reason for such promise as that. I am trying to place it. Do you recall——

Q. I am not pressing you upon it; I don't think it is proper for me to; I suggest that the agreement was made at the conference at your plant at the end of July or the first week in August, 1934; and I simply ask you if you recall it?

[fol. 3475] A. No, I do not recall it.

Q. But you do not deny it either; it might have been done?

A. I deny it because I cannot even place it.

Q. You kept on using the machines?

A. Yes, sir.

Q. One more factor in the suggestion I make to you was that you had said you would go to the hand-making of milk bottles after September 6th, 1934?

A. I don't recall the discussion at all.

Q. I will see if I can help your recollection on that. I show you a telegram of September 24, 1934, addressed to you from the Hartford-Empire Company; which I ask to have marked——

The Clerk: Exhibit H-5056.

Q. —and ask you if you received that wire?

A. As I say, I don't recall this discussion at all.

Q. My question now is as to the wire. Your answer is yes, to the wire, is it not?

A. I don't recall receiving it; but I am sure the wire is good, of course.

Mr. Goodrich: I offer it in evidence, Your Honor.

The Court: It may be admitted.

Thereupon Exhibit H-5056 was read to the Court by Mr. Goodrich, of counsel for Hartford-Empire Company.

Q. And at that time you did not stop using the feeders, did you, Mr. Coleman?

[fol. 3476] A. No, sir.

Q. So, finally suit was brought against you, was it not?

A. That is true.

Q. And I believe you stated you made every effort possible to delay the progress of that suit?

Mr. Freed: Objection to that, if the Court please. He did not say that.

Mr. Goodrich: I will withdraw the question.

The Court: No, he did not say that.

Mr. Goodrich: I do not mean to misquote him.

Q. Did you not, you and your company, make every effort to delay the progress of that suit?

A. We could not delay it until it was filed, could we? I do not quite get——

Q. No, no; I mean after it was filed. You testified that suit had been filed. I ask you whether or not, after that, you did all you could to delay its being brought to trial?

A. Yes, I think that is true.

Q. You employed counsel, Mr. Schley?

A. Mr. Schley.

Q. You also employed Mr. McCartney, did you not,—was he not also counsel for your company?

A. Oh, yes. He lived at Brownwood, I believe.

Q. He was an attorney in Brownwood?

A. Yes, sir.

Q. Did you have any other counsel?

A. Not that I recall.

[fol. 3477] Q. One of the first things you requested was delay in filing your answer, was it not?

A. I would not recall that.

Q. You don't remember,—I ask to have marked, a telegram of October 31, 1934, addressed to Knape-Coleman by R. F. Hatch, and I show that to you and ask you if you remember receiving that, Exhibit H-5057?

A. I don't remember but I probably did.

Mr. Goodrich: I offer it in evidence.

The Court: It may be admitted.

(Exhibit H-5057 is read by Mr. Goodrich.)

Q. Do you know when your answer in the suit was filed, Mr. Coleman?

A. No, I do not.

Q. You paid no attention to that yourself?

A. No.

Q. You left that to your attorney?

A. Well, I would not remember it anyway. It has been quite a period of years.

Q. Do you remember the time within which your answer should have been filed, elapsed without having been filed?

A. No. I don't remember that.

Q. I will ask to have marked, telegram of December 17, 1934, addressed to Mr. Coleman from R. D. Brown. I show you Exhibit 5058 and ask you if you recall receiving that telegram?

A. I remember receiving that. Yes, sir.

Mr. Goodrich: I offer that in evidence.

The Court: It may be admitted.

[fol. 3478] (Mr. Goodrich reads Exhibit H-5058.)

Q. So the suit came on for trial as you testified, Mr. Coleman, and I believe it was settled the day of the trial or the day after, was it not?

A. That is true.

Q. When you got to court that morning your counsel requested the court for adjournment until after lunch in order to effect a settlement, did he not?

A. That is probably so.

Q. And the Court granted him an hour, did he not?

A. I don't remember the time.

Q. But he did grant an adjournment and you did make a settlement then and there?

A. Yes.

Q. And you had not told your attorney that the settlement had been proposed and the papers prepared and sent to you some days before that?

Mr. Freed: I object. Conversations between him and his attorneys certainly are not admissible.

The Court: Yes.

Mr. Goodrich: I withdraw the question.

Q. At any rate, a settlement proposal had been agreed upon between you and Hartford prior to that day, is that true?

A. No. That is not so.

Q. Then a settlement proposal had been submitted to you by Hartford or to Hartford by you, before that time, which?

A. It had been submitted to me personally. It never had been submitted to the company. It was submitted, as I [fol. 3479] recall, while I was in Hartford.

Q. But you had not passed it on to the company?

A. I had no papers or anything. It was an informal discussion there at Hartford.

Mr. Godrich: I ask to have marked, telegram October 26, 1934, to R. F. Hatch from Knape-Coleman Glass Company, Exhibit H-5059.

I ask to have marked also a reply telegram of October 27, 1934, to Knape-Coleman Glass Company from R. F. Hatch, Exhibit H-5060, and I beg leave to remove these and substitute photostatic copies if the Court will permit.

The Court: Very well.

Q. I show you H-5059, Mr. Coleman, and ask you if you remember sending that telegram?

Mr. Freed: I object to that. That telegram is a carbon copy. I object to the form of the question. If the question should read, did he send the original of that telegram, I would have no objection.

Mr. Goodrich: I accept the amendment with thanks.

A. I don't recall that telegram. I notice I did not sign the telegram.

Q. Do you ever sign a telegram?

A. Oh, yes. Well, I don't say always.

Q. I hand you H-5060 and ask you if you recall receiving that message or the original thereof?

A. I don't remember.

[fols. 3480-3481] Q. You would not say you did not?

A. No.

Q. And H-5059, you would not say you did not send that message?

A. No. I would not say that we did not.

Mr. Goodrich: I will state to the Court and counsel that these are the original file copies which I myself removed from the original files of Hartford. They have been seen before by representatives of the Department of Justice, and I offer them in evidence.

* * * * * * *

[fol. 3482] The Court: They may be admitted.

Mr. Goodrich: Thank you. Exhibit 5059 reads—if the Court has read them, I will not take the time.

The Court: The Court has read them.

Q. Do you remember the day on which the complaint was filed in the suit against you—my recollection is you guessed May or June?

A. I don't know.

Q. It was suggested October 11, 1934. Could you say whether that is correct?

A. I don't recollect.

Q. Can you tell us the exact date when the settlement was effected?

[fol. 3483] A. No. I could not.

Q. I suggest to you April 29, 1935. Could you say whether that was correct?

A. I think that it is. It was within that month.

Q. In that settlement you sold your machines to Hartford for $10,000 cash?

A. That is right.

Q. You paid no infringement damages?

A. That is right.

Q. You got a lease and a license for six months?

A. Yes.

Q. That you described as a limited license. What could you make under that license?

A. Milk bottles only.

Q. Could you not make pressure ware?

A. I don't recall the details. In fact, I haven't seen a copy of that agreement in five or six years.

Q. But it is your idea you could make only milk bottles?

A. As I recall. May I tell you as I recall?

Q. Yes.

A. We did have the six-month license with milk bottles. At the end of that period we would have a right, if we so desired, to take a license of packers' ware.

Q. You had an option at the end of that six months to get two Hartford feeders?

A. For packers' ware.

Q. For general line of packers' containers?

A. Yes.

[fol. 3484] Q. You could not make milks under that new license?

A. As I recall it.

Q. Wasn't there an understanding between you at the time of this settlement that the six-months' license was given to you so that you could make the transition from

milk to packers ware and at the end of six months have a going business in packers ware?

A. I would like to delete that a little bit. The reason for it was——

Q. All right, strike it all out and tell us what your reason was.

A. The reason for our desiring six months was to fulfill existing milk-bottle contracts we had on the books at that time.

Q. I suggest to you, Mr. Coleman, you had during that six months, pressure ware, beer bottles, liquor ware and miscellaneous container ware. Would you say that was right or wrong?

A. I don't recall.

Q. You don't remember?

A. No.

Q. Whatever the contract says, that will be it, I suppose?

A. That is right.

Q. And you had an option based upon a satisfactory financial condition at the end of two months to get two Hartford feeders, did you not?

A. As I say, I have not seen the contract in years.

Q. Let me ask you about one more thing, then I will be [fol. 3485] done. I am sorry to have been so long, Your Honor. Who was Mrs. Harrell?

A. She owned a printing company there in Austin. What her other connections were I don't know, other than she had some other investments, I think.

Q. Was she a stockholder in Knape-Coleman Company?

A. Yes.

Q. When did she first buy her stock, do you remember?

A. I don't remember when she bought her first purchase of stock. She bought stock and later loaned money to the company, I believe.

Q. Did she buy stock on more than one occasion?

A. I don't remember that.

Q. Can you recall how much stock she owned, finally?

A. I don't know that. I wish we had the stock books here, because this is guessing, purely.

Q. I had hoped that you would have them. Do you recall how much she loaned the company?

A. Her total investment probably was—I am guessing now—I don't know, after I left the company she loaned them money.

Q. During the time you were there, make your guess on that?

A. The sum I am thinking is around $10,000. Now it might be off. It might have been $20,000.

Q. Was it that much in stock or loans or both?

A. That covered both.

Q. Was she not one of your most substantial stockholders?

A. That is right. Yes.

[fol. 3486] Q. So it could have been well more than the amount you mention?

A. Yes. She and Mr. Schroeder were the principal of our stockholders.

Q. The company was not a success financially, was it, Mr. Coleman?

A. Well, we never paid any dividends.

Q. Now as a matter of fact, your operation loss for the year 1934, when you paid no royalties, was $16,000 or more. Would you say whether that was right or wrong?

A. I don't recall. I would wonder where we had that much to lose.

Q. Well, that is a thing I meant to ask you about. Where did the money come from? You didn't get much operating capital out of the amount put in by these gentlemen. You ran up maybe ten or fifteen or eighteen thousand dollars on them, I believe your books show an operating loss of $16,000 lost for the year 1934?

A. I don't remember.

Q. Do you think that is about right?

A. I don't know. I would not even guess.

Q. But you did not make any money, did you, in 1934?

A. I don't think so. I am sure we did not.

Q. As a matter of fact the stockholders were dissatisfied, were they not?

A. Yes. That is true.

Q. How much salary were you getting during the year 1934?

A. I think my salary and Mr. Knape's salary was set up [fol. 3487] at $200.00 a month.

Q. For each of you?

A. Yes.

Q. And Mr. Foster the same?

A. No, Mr. Foster did not draw a salary, I don't think.

Q. Was he on a commission?

A. No. He did not have any direct connection in the operation.

Q. He was not giving his services to the company?

A. No.

Q. Just a nominal officer?

A. Yes.

Q. At Mrs. Harrell's insistence there was an audit of the books in August, 1935, authorized at a general stockholders' row?

A. Yes, it was quite a row.

Q. And the affairs of the company were all gone into thoroughly by outside accountants?

A. I don't remember—an audit was made probably by outside accountants,—the West Texas Utilities made an audit about that time.

Q. Following the audit there was a reorganization of the company?

A. That is right.

Q. And following the audit and reorganization the company relinquished your services?

A. No. I beg to correct you there.

Q. Do so, please.

[fol. 3488] A. It was purely a difference of opinion. There were about three of us trying to run that company and losing money at it, and I have gathered from this discussion that some things I have heard since that time, that Mrs. Harrell and probably Mr. Haberlin were not aware of the type of contract from some of the correspondence you read, that they had a limited license on milk bottles.

Q. Did you tell them?

A. The contracts were there for everyone to see.

Q. Did you explain the contracts to them before you left, or call their attention to the contracts?

A. I am sure Mr. Knape or I did.

Q. At any rate, the company was reorganized?

A. It was not reorganized. There was a change in the management of it.

Q. All right, put it that way. And you left?

A. Yes.

Q. Mr. Peterson succeeded you as general manager?
A. He or Mr. Haberlin.
Q. And you left Santa Anna?
A. That is right.
Q. And at that time I believe you wrote some letters of explanation to Hartford and asked Hartford to ask you find employment in the glass industry?
A. I may have. I probably did. I have lots of friends at Hartford.

* * * * * * *

[fol. 3489] Cross-examination by Mr. Foster:

Q. Mr. Coleman, you say you talked to some jobber in Houston who told you some representative of the Liberty Glass Company was telling that you were going out of business, is that it, in substance?
A. I mentioned the San Antonio jobber.
Q. Do you know who it was in San Antonio?
A. If you could name your jobbers there?
Q. I don't believe we have any. I am not saying we don't. But it was in San Antonio,—it was our jobber in San Antonio?
A. I would say that all of your principal jobbers that [fol. 3490] you have been selling and that we had acquired the business.
Q. You don't understand me. You testified, if I remember, that you talked to some jobber in San Antonio, a jobber of the Liberty; is that right?
A. Who had been a Liberty jobber.
Q. Where did you talk to him and when, do you remember?
A. Well, it was in his place of business there.
Q. Where was his place of business, now that is what I mean?
A. I believe that is South Preston Street.
Q. You don't know the address?
A. No. He is one of the large jobbers there.
Q. You don't know the address, you don't remember the time nor you don't remember the man's name?
A. No. May I add this? I would not confine that as to only one of the jobbers. That was a general condition.
Q. What other jobber did you talk to of the Liberty and what was his name?
A. I remember the Dallas jobber.

Q. I am asking who our jobber was in Dallas, what his address was or where he was?

A. Let me assist us both?

Q. No, just answer my question.

A. This was five or six years ago and I have been busy with other things and I don't recall their names.

Q. Do you know Mr. Tye?

A. Yes.

Q. Was it he?

[fol. 3491] A. You mean who made that representation?

Q. Yes.

A. If he was the only one——

Q. Mr. Tye is not a jobber. He is our representative in Texas. Is that what you are talking about?

A. No. One of us is confused. I am talking about the jobber. I don't know who passed the information on to the jobbers.

[fol. 3492] Q. Do you know Mr. Tye?

A. Yes.

Q. Now it wasn't he that made the statement to you?

A. No. I said the jobber.

Q. I am just asking you. You don't remember the name of the jobber nor his place of business?

A. I said I don't remember.

Q. Now that one in Dallas, you said you don't know the one in San Antonio; do you know the one in Dallas?

A. No.

Q. You don't know the name of any jobber that ever told you that Liberty was ever spreading this word that you claimed?

A. I believe I did have some conversation with the purchasing agent, isn't it Metzger, in Dallas?

Q. I am asking you?

A. Rather than guessing with you, I would rather not do that. I am testifying under oath that this happened.

Q. I just don't know of any jobber we have in Dallas. We may have and not?

A. We are both in the same boat then. I don't either.

Q. I thought you said you talked to our jobber?

A. Yes, but I don't know his name.

Q. If we don't have one, how could you talk to one?

A. I will assure you that you have some jobbers in Dallas.

Q. Yes, but you don't know their names?
A. No.

[fol. 3493] Mr. Foster: We ask that the testimony concerning this be stricken from the record.
The Court: Overruled.
Mr. Foster: Exception.

Q. One other thing. Did you say in your cross examination that you turned all of your stock back into the company?
A. That is right, yes.
Q. When you left the company in 1935, in August, was it not, you owned no stock in the company?
A. Yes. I owned some stock in the company. I later went through quite a lawsuit in an effort to get something out of it. In fact, it is still in litigation.
Q. I understood you to say on direct examination that you owned no stock at the time you left the company?
A. I did. I think the stock books will reflect that I had no stock in the corporation.
Q. Then did you acquire some after you left the company?
A. No. There was some question of this later division. Mr. Peterson, for one, was one that had a difference of opinion. We disagreed about it. Their contention was I had no stock coming and I later convinced them that I did, but I never held any stock certificate in the corporation.
Q. Then you did own some stock in the company when you left, or claimed you owned some?
A. I claimed I owned some.
[fol. 3494] Q. You were part and parcel of the settlement when the company was finally liquidated and sold to the Liberty Glass Company, weren't you?

Mr. Freed: I object.
Mr. Foster: I will withdraw the question.

Q. Did you have any stock in the Liberty Glass Company or in the Coleman-Knape Glass Company at the time you left?
A. I maintained that I did. They maintained that I did not.
Q. Then it is not true, as you testified, that you turned all your stock in to be resold?

Mr. Freed: I object to it.
The Court: Overruled. He may answer.

A. I had no intention to mislead you. I think I wanted to say we turned this stock in then after this company had gotten into such shape; what was left was to be divided three ways, to Knape and Foster and myself.

Mr. Goodrich: Now, if the Court please, there was no such answer given to me during the cross examination that I have knowledge. He stated flatly in response to my questions as I recall it that these three gentlemen had each originally taken one-third of the stock.
The Court: They took one-third and then turned that stock back in. Now that is all that I recall.
Mr. Foster: That is the way I recall it.

A. If you will let me explain. You see, it was a very loose arrangement, you must understand. We turned back all of our stock without any consideration.
[fol. 3495] Q. But with strings on it. That is what I am getting at. You did not turn it back in. You just pretended to turn it back in, isn't it a fact?
A. No.
Q. If I am not mistaken, you did testify a while ago to the Court that you turned all of your stock back into the company. You testified to that, didn't you?
A. I did.
Q. That isn't true. You turned it back in, but you expected to hold strings upon it, is that right?
A. No. I had no interest in the stock. Personally, my family put money into the company, and I expected to get that back in return. I didn't want any stock in the new company.

[fol. 3496] Mr. Goodrich: I asked this witness how much he himself had put into the company and he said nothing in cash except the pre-organization expense.
The Witness: I am still speaking of that.
The Court: He is trying to explain the matter now and I believe he ought to have that opportunity.

A. What we were speaking of is, if anything came back after I turned my stock in I thought if the corporation were sold I should be reimbursed for what money I have been out in the re-organization expense because, due to some of

my efforts and others, I think every stockholder received back 100 cents on the dollar. You questioned my ability and what-not, but they got their money back. I believe it is true some of them got more back.

Q. Yes, there was only about $35,000 ever put in the company altogether?

A. That is true. The stockholders got their money back.

Q. It is true that it amounted to $35,000, that is borrowed money, stock and everything else?

A. I don't recall the total amount.

Q. Well, that is approximately right, isn't it?

A. Yes.

Q. Out of that you lost about $16,000 one year and two or three thousand in another year, isn't that true?

A. I don't know.

Q. And about the same amount in the next year. Wasn't [fol. 3497] that the general set-up of Knape-Coleman?

A. I don't remember. I want to go on record despite all those things my stockholders have been paid off.

Q. Yes, and everybody else that had anything to do with it were paid off?

A. I would not know about that.

Q. Except Mrs. Harrel, she might not have been paid off?

A. Mrs. Harrel, I understand, received her money.

Q. Well, I don't know. I know how much we paid, but I would not know how it was divided.

A. Well, I would not either.

Q. As a matter of fact, during all the time, counting the 14,000, the 1200, and the money that you borrowed, the money that you sold stock for, the whole amount that was collected for the Knape-Coleman Company only amounted to about $35,000 altogether?

A. That would be close to it.

Q. That is about right?

A. Yes.

The Court: Anything further on cross examination?

Mr. Goodrich: Before you adjourn may I inquire of government counsel——

Mr. Freed: We have no objection to these exhibits.

Mr. Isseks: We will mark them in the morning.

[fol. 3498] Mr. Foster: I believe there is just one other thing I wish to question.

Q. You said you sold bottles. In comparison to our price, at how much?

A. Our price ranged from one or two dollars a gross under your price. Now that is not true in the Houston area. I know the prices were close around there.

Q. Was it true in the Dallas area?

A. I think we were 75 cents a gross under you.

Q. Our prices were lower than anybody else's except yours?

A. I don't know anything about that.

Q. As a matter of fact you did not have any price list,—you did not advertise you were selling your goods at a certain price, did you, at any time?

A. Yes. We sold on a certain stipulated price.

Q. Didn't you first find out what our price was and then sell for two dollars or one dollar under us?

A. I don't think we had a copy of prices.

Q. Isn't that what you did in the business in Texas all the time?

A. Have you ever been to Texas?

Q. I am just asking now?

A. We did sell bottles.

Q. I am just asking, is it true or not?

A. No, it is not true.

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[fols. 3499-3500] Re-direct examination.

By Mr. Freed:

Q. Mr. Coleman, was any objection made by Hartford-Empire to your alleged financial irresponsibility in regard to making packers' ware?

(Question read.)

The Court: When?

Mr. Freed: At the time that the agreement or the settlement was made.

A. As I recall, there was not

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[fol. 3501] (At 10 o'clock a. m., Thursday, April 10, 1941, the trial was resumed.)

Mr. Goodrich: At this time, Your Honor, I would like to offer in evidence the exhibits we have had marked last evening and left with the clerk.

The Clerk: H-5061 to H-5067, inclusive.

Mr. Goodrich: H-5061 is a letter of August 15, 1934, to Knape-Coleman Glass Company from the Hartford-Empire Company.

H-5062 is a letter of September 11, 1934, to Knape-Coleman Glass Company from Hartford-Empire Company, by R. F. Hatch.

H-5063 is on the letterhead of the Knape-Colman Glass Company and is a resolution of the stockholders of that company, certified under date of February 16, 1935, by Harold A. Knape, secretary.

H-5064 is a letter addressed to Hartford-Empire Company dated May 3, 1935, on the letterhead of Robert T. Neal, and signed by him.

H-5065 is a letter of August 20, 1935, addressed to Mr. Hunter of the Hartford-Empire Company by Mr. Coleman.

H-5066 is a letter of August 22, 1935, addressed to Mr. Coleman by Hartford-Empire Company, Mr. Hunter.

H-5067 is a letter of August 27, 1935, addressed to Mr. Hunter by Mr. Coleman.

I offer all these exhibits in evidence.

Mr. Freed: As we stated yesterday, Your Honor, we don't question the authenticity of those letters.

[fol. 3502] The Court: They may be admitted.

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Thereupon the government called as a witness, PAUL L. GEER, who, being first duly sworn, testified as follows:

Direct examination.

By Mr. Freed:

Q. Will you state your name, please?

A. Paul L. Geer.

Q. Where do you live?

A. Pittsburgh.

Q. What is your business, Mr. Geer?

A. I am treasurer of the Amsler-Morton Company.

Q. How long have you been connected with that company?

A. Since May 18, 1918.

Q. Who are the other officers of the Amsler-Morton Company?

A. Mr. William A. Morton is president, and Mr. P. M. Offill is vice-president, Mr. Carl W. Gass is vice-president [fol. 3503] in charge of engineering, and I am secretary and treasurer.

Q. And where is the Amsler-Morton Company located?

A. In the Fulton Building, Pittsburgh.

Q. What is the business of the Amsler-Morton Company; what do they do?

A. Well, at that time we were building——

Q. I mean at the present time.

A. At the present time we are concentrating on building equipment for the steel industry, such as heating furnaces, gun-forging furnaces, pit furnaces for the heating of large ingots, and other steel treating furnaces.

Q. Have you, yourself, had some engineering experience?

A. Well, I have been identified with it from the beginning. In the last few years, however, I have enough business to take care of without bothering with that.

Q. Was the Amsler-Morton Company at one time engaged in the manufacture of glass-making machinery?

A. Well, I wouldn't say exactly machinery. We concentrated primarily on the building of glass melting furnaces, glass annealing lehrs, and other miscellaneous items. We didn't get into the machinery end.

Q. When did it begin to do that type of business?

A. We started back in 1915.

Q. And continued in that line until when?

A. Well, I would say 1937 would be about when we finished up.

Q. You manufactured, in the course of that time, lehrs, we assume?

A. Yes, we built quite a large number or lehrs.

[fol. 3504] Q. When did you manufacture the first lehr?

A. We built the first lehr for the Graham Glass Company in the summer of 1915.

Q. In the course of time did you obtain patents on your lehrs?

A. Yes, we had quite a number of patents.

Q. Will you tell the Court, in the course of time, from 1915 till 1937, how many lehrs you manufactured, if you can give us approximately the total number?

A. Well, altogether, I think we built over 450 lehrs, but some of those replaced older types. We sold about 450 altogether.

Q. Can you tell us what the largest number of lehrs was you sold in any one-year period?

A. As near as I can remember, I think 42, for the container industry.

Q. Well, is there a difference between the sales for the container industry and some other industry?

A. We covered all branches of the glass industry. We probably built during that time several lehrs for annealing other kinds of glass, such as tableware and sheet glass, and so on.

Q. During the period of time the Amsler-Morton Company was engaged in the manufacturing of lehrs, was Hartford-Empire Company engaged in the manufacture of lehrs, or some one for them?

A. Well, the Hartford-Empire Company started into the game——

[fol. 3505] Mr. Goodrich: I ask the Court at this time to admonish this witness to tell of Hartford's business what he himself knows.

The Court: Yes, only what he knows.

Mr. Freed: I assume that is what he was telling.

The Witness: I intend to tell that. They started to put lehrs on the market about 1926, the latter part.

Q. Did the Amsler-Morton sell the lehrs they manufactured outright, or did they lease the lehrs?

A. The Amsler-Morton sold their lehrs outright.

Q. Now, can you tell us the names of the various glass companies to whom the Amsler-Morton Company sold those lehrs, some of them, the principal glass companies?

A. We sold lehrs to the Fairmount Glass Works, the Hocking Glass Company, the Root Glass Company, Obear Nester, one to Hazel-Atlas, Libbey Glass, Corning Glass for the annealing of glass bulbs; we sold the Glenshaw Glass Company, the McKee Glass Company—we sold to nearly all of them.

Q. Now, Mr. Geer, could the lehrs that you manufactured be used with any kind of formers or feeders, or were they adapted to one specific or one particular kind?

A. They could be used for either mechanical machinery, mechanical feed, or by hand-feed.

Q. Now, in the course of time that you engaged in the manufacture of lehrs, did you have occasion to notify anyone for infringement of your patents or to sue anyone for the infringement of your patents?

A. Well, we notified the Hartford Company after they [fol. 3506] had notified us on infringement, but we never notified anybody else to my knowledge; and we never sued anybody.

Q. Now, you say you notified the Hartford Company when they notified you. Did the Hartford-Empire Company notify you of infringement in connection with the building of your lehrs?

A. Yes, some time in the early part of 1928, when we began to put our lehr on the market in large numbers, they notified us that we were infringing a certain patent,—I have forgotten the number right now,—and asked us to desist manufacturing.

Q. Did you desist manufacturing of them after you were notified?

A. No, we turned around and notified them that they were infringing one of our patents, and we gave other reasons for not desisting.

Q. Did you have any conversations with the Hartford-Empire Company concerning these alleged infringements, either at your place of business or at their place of business, or elsewhere?

A. Oh, yes, we had quite a number of conferences. Mr. Walter Amsler, who was connected with the company at that time, probably visited me ten or twelve times during the early part of that year.

Q. With whom was Mr. Amsler connected at that time?

A. With the Hartford-Empire Company.

Q. Had he prior to that time been connected with your company?

A. Mr. Amsler was the original organizer of our company.

[fol. 3507] Q. Had he later gone to the Hartford-Empire Company?

A. He went to the Hartford-Empire Company, I believe, in the early part of '27, or maybe the middle of '27.

Q. Will you please continue? You started to tell about Mr. Amsler visiting you.

A. And we received visits from Bowen, and Mr. Bowen, I believe, was chief engineer of the British Hartford-

Empire Company; and we received visits from other people who evinced an interest in the situation, and we were also asked to go to Hartford to visit them.

Q. Now, will you relate to the Court what occurred during the visit of Mr. Bowen, whom you have described as being with the British Hartford-Empire Company?

Mr. Goodrich: May we first fix the time, if Your Honor please?

Q. Will you fix the time, please?

A. You mean the date?

Q. The approximate date; I assume the approximate date will be satisfactory.

A. I think the first contact we had with Mr. Bowen was around the latter part of January or the early part of February, 1928. I am quite sure it was about that time. And we also received a number of visits from Mr. Amsler on and about that time; and also the invitation to Hartford. The whole situation was in an effort to get us to show our hand in regard to the design of the lehr, and for them to obtain drawings, either through Mr. Bowen or——

Q. Did Mr. Bowen request drawings from you?

[fol. 3508] Mr. Goodrich: May I interpose a moment? I move to strike the witness' answer. I think he is giving a conclusion here.

The Court: Yes, that is a conclusion. The latter part of the answer may be stricken. He may tell what was said and done, not his conclusion of what was the purpose of the action.

Q. Now, will you tell us, tell the Court, what Mr. Bowen said to you at the time of his visit?

A. Mr. Bowen wanted to obtain, first, all rights for the Amsler-Morton lehr in England; and we quoted him a price on those rights. And then he wanted to see the patent drawings and the patent applications. We refused that. Then he wanted to buy a lehr, and we refused to sell him a lehr. And then he wanted to sign an agreement covering the price we quoted, but he wanted to pay only $2,000 down on it, and we wouldn't consider it on any other basis but cash. I think the price we quoted was $35,000 for the British rights and our drawings.

Q. Did anything come of those negotiations?

A. No; quite a lot of correspondence, though, in connection with it.

Q. You say you had made a visit to the place of business of the Hartford-Empire Company?

A. That is true.

Q. Will you tell use when that was, Mr. Geer?

A. Well, there was quite a lot of correspondence back and forth between the Hartford Company, dating from the early part of February, but we were making an effort [fol. 3509] to determine why they wanted to see us, and we finally got together, I believe in May, 1928.

Q. Did you. yourself, go there, Mr. Geer?

A. Yes, Mr. Morton and I went to Hartford.

Q. How long did you stay there?

A. Well, I think we finished up the day we got there. We arrived in the morning and left in the evening?

Q. Now, whom did you see in Hartford?

A. Well, we saw Mr. Smith, Mr. Parham, Mr. Brown, Mr. Eldred. I don't believe Mr. Pease was there, I don't quite remember, but several others besides; those were the principal ones.

Q. Did you see them altogether or see them separately?

A. Well, at first we were met at the—I believe we were met at the train by Mr. Eldred and one or two other members, and they took us to lunch, and after lunch they drove us out to their offices, and we spent the afternoon there.

Q. Did you go to Harford at your own expense or at their expense?

A. Well, they agreed to pay the expenses, but I cannot believe—I don't remember but I cannot believe that we permitted that.

Q. Will you relate to the Court what occurred at Hartford when you started to discuss the matter of the patent infringement?

A. Well, the first thing they wanted us, they wanted to [fol. 3510] know if we had brought our drawings along, and we said we had not. And they seemed very much disappointed about that, but then we started to talk along different lines. They seemed to believe that we were infringing their patents.

Q. What did you reply to that?

A. Well, we didn't think—we told them we didn't think so, and we gave them the reasons. And then they started

to talk along the lines of getting together, and the suggestion was made that we increase our price from $9,500 to $13,500 and they would permit us to build the lehrs if we would pay them the difference.

Q. Were you selling your lehrs at $9,500 at that time?

A. Yes, outright.

Q. The suggestion was made you sell them at thirteen five?

A. Thirteen five.

Q. And what was to happen to the difference of $4,000?

A. Well, they were to get that. They were to get the $4,000 on each lehr.

Q. Now, do you know, or did you know at that time, what Hartford-Empire was charging for their lehrs, or on what basis they were erecting their lehrs at that time?

A. I had seen several of their agreements. As near as I can remember it as $5,250 for the materials that the purchaser or the licensee paid, and the erection costs, which amounted—which I learned later amounted to about $1,000; and then they were to pay $100 a month royalty.

[fol. 3511] Q. And the suggestion made to you was that you charge thirteen five for yours?

A. Yes, sir.

Q. What did you reply to that suggestion?

A. I think at the time we just took it under advisement. Eventually we decided to go ahead on the basis that we were selling lehrs, because we would have been put to a decided disadvantage to raise our price to 13,000. Nobody would have bought them.

Q. Did you notify them to that effect?

A. I don't know whether we notified them in writing. I know I told Mr. Amsler that a number of times, discussed it with him a number of times.

Mr. Goodrich: Do I understand what the witness has just answered in the last two answers is still his conversation at the Hartford conference?

The Court: No, he said later they took it under advisement, and then later he had a conversation with Mr. Amsler.

Q. From then on, did you then continue to manufacture lehrs along the same lines, and sell them in the same fashion that you had sold them before?

A. That is true.

Q. Now, Mr. Geer, did anyone approach you at any time for the purpose of buying the business of the Amsler-Morton Company?

A. Yes we were approached in the early part of 1934.

[fol. 3512] Q. By whom, sir?

A. By Mr. Harry Collin, of the Owens-Illinois Glass Company. Mr. Collin came there and introduced himself by stating that he was a vice-president of the Owens-Illinois Glass Company.

Q. Was Mr. Collin a vice-president of Owens-Illinois?

A. No, he was a director—I mean—of the Owens-Illinois Glass Company; that he was a member of the company that combined the Owens Bottle Company and the Illinois Glass Company together, forming the Owens-Illinois Glass Company; and that he also was instrumental in combining his company,—his company was,—instrumental in combining the Lynch Glass Machinery, the Ed. Miller Company of Columbus, and the O'Neill Machine Company of Toledo.

Mr. Collin suggested that we sell our glass business; he did not say to whom; but he made us an offer of $200,000 for the glass patents, and—well—to get out of the glass business: that was the idea.

Q. Did you accede to that offer?

A. No. We felt it was not a good enough offer. We figured out on the basis of the investment, we had about $200,000, at six per cent interest, and it would only give $12,000; and Mr. Morton and I, each of us, were making that much money and more; and we could not see our way clear. We asked for 305,000, I believe.

Q. Was that offer of $200,000 subsequently changed?

[fol. 3513] A. It was changed. Mr. Collin raised it to 260; and during the talk, he asked to see me personally. He wanted me to sell my share of the company, which was the controlling interest, for $200,000. But I could not see the idea of selling Morton out; we had been together too long.

Q. Was that the end of that particular negotiation for the request to purchase the Amsler-Morton Company?

A. Mr. Collin may have come one more time—I am not certain—to discuss that phase of the situation; but that consummated that phase of the situation.

Q. Did he come back?

Mr. Goodrich: May I interpose a moment to ask counsel to fix the time of these two conversations?

The Witness: I think the time was the latter—I will not say I think—I know the time was the latter part of January or the early part of February in 1934.

Q. Did he come back later in company with others?

A. Yes, sir.

Q. And when was that with reference to the first two visits?

A. That was about a month later, maybe six weeks.

Q. That would be what year, again, sir?

A. The early part of 1934.

Q. Whom did he come with the second time?

A. The second time, Mr. Collin came with Mr. Frasier of the Simplex Engineering Company; and Mr. Benjamin [fols. 3514-3515] Hazelton, vice-president of Owens-Illinois Glass Company.

Q. Do you know what, if any connection Simplex Engineering Company at that time had either with the Hartford-Empire Company or the Owens-Illinois Glass Company?

A. Well, Simplex was very close to both Hartford and Owens.

Mr. Goodrich: I move to strike that answer, if the Court please. Let him be specific.

The Court: Yes, that does not convey any idea. That may be stricken.

Q. Aside from that, do you know if there was any connection between the Simplex Engineering Company and Hartford-Empire Company, if you know?

A. I am not sure at that time whether they were licensed by Hartford; but I know they were, up to that time; and I also know that Mr. Benjamin Hazelton was a very large stockholder in the Simplex Engineering Company, I know that.

Q. Tell the Court what occurred during that second visit of Mr. Collin?

* * * * * * *

[fol. 3516] Q. The last question was, what occurred upon the second visit of Mr. Collin when he was accompanied by Mr. Hazelton and Mr. Frasier?

[fol. 3517] A. Am I allowed to mention Mr. Hazelton?

Q. Yes, the Court has so ruled.

A. Mr. Collin suggested, and Mr. Hazelton concurred, that they put the Amsler-Morton Company and the Simplex Engineering Company together on a basis of one-third for Amsler-Morton, one-third for Simplex, and some outside party was to have the other third. The scheme was that each company would take their cash out of the business; and that they would collect, get together, for the other third one-half a million dollars which they would throw into the company as working capital. Mr. Hazelton stated he would see that we got all of the tank business of the Owens-Illinois Glass Company and other companies; and that we would get the rights to build all of the Hartford lehrs.

Q. Did you agree to that proposition?

A. No, we did not agree to that. They would have sold us out; somebody would.

Mr. Goodrich: I move to strike that.

The Court: Yes, that may go out.

The Witness: Well, we did not agree to it, unless we could have control.

Q. What was your counter-suggestion?

A. That was the only suggestion we had to offer, that we would not consider it unless we could get control; but he gave us a month to think it over.

[fol. 3518] Q. Who gave you a month to think it over?

A. Mr. Hazelton.

Q. What did he say concerning that time of one month to think it over?

A. Well, he said as he was leaving: "Now, boys, we have made you a good proposition." He said, "If you take it, you are going to make some money." He said, "We will give you a month to think it over." He said, "But if you do not go on with us, you are going to be sued, and continue to be sued until you are out of business." He said, "It is our plan that nobody in the glass industry is going to be allowed to own one piece of equipment."

Q. Was that the extent of his conversation just before he left?

A. That about ended it. We were looking for trouble from then on.

Q. What happened after that?

A. About four months later, a customer of ours, in Baltimore, was sued by the Hartford-Empire Company: the Swindell Company, of Baltimore.

Q. To your knowledge, was the Swindell Company a licensee of Hartford-Empire?

A. Yes, they were licensees, both on feeders and lehrs. The Hartford Company had built three lehrs for them prior to the time that the Swindell Company bought two of our lehrs.

[fols. 3519-3522] Q. Did you defend the suit that was filed against the Swindell Company?

A. Well, we were obliged to defend it; because Mr. Walter Swindell insisted that we write a defense clause, a save harmless clause, into the agreement. Although we did not want to do it, he insisted on it, and we finally did. But he had previously signed a license with the Hartford Company that precluded——

* * * * * * *

[fol. 3523] Cross Examination.

By Mr. Goodrich:

Q. Mr. Geer, your company is a very substantial factor in the equipment business in the steel industry?

A. Yes, I think so.

Q. When did you start to develop that business?

A. We started to develop that about the time we were in litigation with Hartford, about 1935.

Q. 1935?

A. Yes, sir.

Q. Since that time you have built it up to very substantial proportions?

A. Yes. Most of our business has been secured since the War.

Q. This present war?

A. Yes, sir.

Q. You have very little glass equipment business, if any, now?

A. We do get a few jobs from personal friends in this country; but we are building up quite a fair business in South American and other outside countries.

Q. On glass making equipment?

A. Yes, sir.

Q. So far as the United States is concerned, you are paying no attention to that branch of your business?

A. We are only paying attention to business of those who want the equipment in the line in which we can furnish it.

[fol. 3524] Q. That is, if the orders come to you, you try to fill them?

A. Oh, no, we go around once in a while. We have some men covering the field. Whenever they are in a town where there is a glass plant, they usually go in and see them.

Q. Have you advertised that branch of your business at all?

A. Consistently, yes.

Q. So it is still a live part of your business?

A. I would not say that; maybe not five per cent; maybe not more than one per cent; I will say five per cent.

Q. I will show you the October, 1940, issue of "The Glass Industry," a one page ad. The identical ad appears at page 296 of "The Glass Industry" for June, 1940, does it not?

A. That is right. We continued to advertise all of the time.

Q. The same ad on page 373 of the August, 1940, issue of the same magazine; the same ad on page 152 of the April, 1940, issue of "The Glass Industry"?

A. Yes, sir.

Q. Will you state for the record the machines shown in that advertisement as held out for sale to the public by the Amsler-Morton Company please?

A. We cannot build the containers——

[fol. 3525] Q. Please just answer my question. State for the record the various pieces of glass machinery that you advertised?

A. You mean you want me to read these off as they are specified here?

Q. If you will, please.

* * * * * * *

[fol. 3526] Q. Just read off the list, if you will, please?

A. High-speed presses, sheet glass lehrs, container lehrs, grinding and polishing equipment, heavy duty presses, batch mixing and storage, high-speed tumbler presses, tube drawing machines, rolled sheet glass machines, Fourcault machines, gas producers and coal handling equipment.

Q. Did you also name the batch mixing storage machine?

A. Yes.

Q. And the container lehr?

A. And the container lehr.

Q. Is that container lehr pictured here in the lower left-hand corner the same lehr you were making in 1934?

A. This is the one we built for Swindell.

Q. That very lehr?

A. Yes.

Q. And you are still advertising it for sale?

A. Not in this country. This is our only method of reaching the foreign trade.

Q. This is an American publication?

A. These magazines are all sent to foreign countries. We make sure they reach the very people that we want to sell to.

Q. Of course that is the idea of advertising. But this is your ad?

A. It is our ad.

Q. And it comes out, that full-page ad, in this issue of the glass industry that I have in my hand, and all these other copies here?

A. Yes, every month.

[fol. 3527] Q. In that ad you advertise this container lehr?

A. Oh yes, but we could not sell it in this country.

Q. It does not say anything on here about not for sale in the United States?

A. No, we don't say that, but we don't sell them.

Q. But you are still holding out to the public the Amsler-Morton Company makes a container lehr?

A. All the glass industry knows they can't buy that lehr from us. We haven't had an inquiry since the suit.

Q. What would you do if you did have an inquiry?

A. Turn it down.

Q. You haven't found a way to build around it?

A. Oh yes, we could build a lehr, but it is not worth the effort now. The other people have gotten into the field and the prices are reduced and we don't want to get into any more litigation anyway.

Q. Now this, you say, is the picture of the lehr that you sold to Swindell?

A. That is true.

Q. That lehr that you sold to Swindell had two features that were in conflict?

A. To what?

Q. Two features of the mechanism that were in conflict?

Mr. Freed: I object to that. There has been nothing said about the Swindell lehr here. We are waiting for the production of that contract before we can question this witness concerning it.

Mr. Goodrich: Very well.

[fol. 3528] Q. How many patents did Amsler-Morton have, Mr. Geer?

A. In what particular line?

Q. Well, let's take lehrs first.

A. Oh, probably eight or ten patents.

Q. You considered patents of some importance to your company, did you not?

A. We took them out as a means of preventing litigation from outside sources.

Q. As a means of protecting your own inventions?

A. That would be partial protection. If you got your product covered then nobody else can cover you in the Patent Office.

Q. So Amsler-Morton Company did take patents on those inventions to afford those inventions such protection as it could?

A. As much as we could.

Q. You think you had about eight or ten patents on lehrs?

A. I think so.

Q. What patent counsel have you employed in obtaining and enforcing those patents?

A. We had Clark and Doolittle in Pittsburgh, they took out some of them. Edward A. Lawrence took out some. William B. Jaspert, Pittsburgh, took out some.

Q. How about Mr. Kingsland?

A. Mr. Kingsland was not in consultation.

Q. There were three general advisers employed more or less regularly?

[fol. 3529] A. Yes, as patent solicitors I would say.

Q. Do you consider the obtaining and protection of patents the ordinary and normal course of business?

A. It is absolutely essential if you desire to eliminate litigation.

Q. Now, you testified you built about 450 lehrs since 1915?

A. That is right.

Q. When did you first start building the lehr illustrated in the full page advertisement?

A. About 1927.

Q. Prior to that time most of the lehrs you built were the wrap-around brick type?

A. Oh no, not all of them were. Most of them were. Some of them were not.

Q. How many of them were the old wrap-around brick type?

A. Most of them.

Q. How many of them?

A. Probably 75 or 80 per cent.

Q. Of the 450?

A. Maybe more than that.

Q. As a matter of fact, if someone wanted that lehr today you could build it for them?

A. I don't think we would bother with it.

Q. No, but answer my question, please?

A. I doubt it very much.

[fol. 3530] Q. Do you think such a lehr is so protected by patents that you could not build it now?

A. Our attorney advised us that we could not build the lehr that we built twenty years ago in view of the Third Circuit decision in the lehr case.

Q. You mean the Fourth Circuit?

A. Yes, Fourth Circuit.

Q. So that because of the decision of the Fourth Circuit Court of Appeals you think that lehrs you built even twenty years ago, it is the opinion of your counsel, if I understand you, were infringements of patents involved in that suit?

Mr. Freed: I object. Whether they are infringements or not, I don't think this witness is competent to answer.

The Court: Yes.

Q. Then I ask you this question. Why could you not now build those lehrs?

Mr. Freed: He answered the question twice. He has been told by his counsel they could not be built.

The Court: He already answered that question. He said because of the Fourth Circuit Court decision.

Q. So that going on with the division between types of lehrs, can you give me an estimate of the numbers of lehrs of the type sold to Swindell Brothers that you built?

[fol. 3531] A. You mean the number we put in Swindell?

Q. No, the whole industry?

A. Well, I think Hartford has that information. I think it is around—is it 120, Mr. Parham?

Mr. Parham: I don't recall.

A. Something like that. Over a hundred anyway.

Mr. Goodrich: Your Honor, I am not trying to press the same question in which you shut me off. I want to ask one other question which is somewhat related.

Q. Can you today build any of the lehrs that you built in the past, not only those that you built twenty years ago, but any that you ever built?

Mr. Freed: I object to that.

The Court: He may answer if he knows.

Mr. Freed: It seems to me this witness is not competent to answer that.

Mr. Goodrich: I am asking for his answer on the same basis.

A. What is the question?

The Court: Read the question.

(Question read.)

A. I can only refer you to the report that our attorney, Mr. Kingsland, made after that decision, that we could not build——

Mr. Freed: Just a second. I object to that. Any report made by his counsel to himself——

[fol. 3532] Mr. Goodrich: Is privileged.

The Court: If he knows of his own knowledge, he may answer.

A. We relied a great deal on the patent attorney in that connection, and I would not care to make that statement.

Q. Did you, Mr. Geer, give what you described as a guarantee to save harmless with each of the lehrs of the Swindell type that you sold to the industry?

A. Very few of them. I think three or four.

Q. How many do you have?

A. You mean how many lehrs or how many agreements?

Q. How many agreements?

A. I would say not over four or five at the outside.

Q. How many lehrs would those four or five agreements cover?

A. Maybe ten or twelve.

Q. All together?

A. Yes.

Q. Not for each agreement but all together you think you had save-harmless guarantees and a defense guarantee covering about ten or twelve lehrs?

A. I think so.

Q. You had sent an infringement notice to Hartford-Empire, I believe you testified?

A. Yes.

Q. Did you ever bring suit on that notice against Hartford?

A. No. The suit we had with Swindell about broke us up. [fol. 3533] We did not want any more suits.

Q. Your notice had been sent out before the Swindell suit, had it not?

A. Yes.

Q. What did Hartford reply to your notice?

A. They said they are willing to litigate it.

Q. They invited you to sue them, did they not?

A. Yes.

Q. But you did not do so?

A. No.

Q. You knew at that time that Hartford claimed you were infringing its patents?

A. Yes.

Q. In making the lehrs?

A. Yes.

Q. You chose to run the risk of infringement and continue?

A. No. We were not in the suing business. We never sued anybody.

Q. My question was, you chose to run the risk of infringement damages and continued to manufacture your lehrs?

A. Well, we just figured we were right.

Q. Please answer my question. The reporter will read it.

Mr. Freed: Again I object.

(Question read.)

The Court: He may answer the question.

A. I will say yes, we chose to.

Q. And you did continue to manufacture and sell?

[fol. 3534] A. Absolutely.

Q. You notified the industry, did you not, that Hartford lehrs infringed Amsler-Morton patents?

A. Only in defense of such argument by the Hartford Company.

Q. Please answer my question.

Mr. Freed: I submit he did answer.

(Question and answer read.)

The Court: The question is, did you notify the industry, Mr. Greer?

A. We notified a few in the industry. Not as a whole.

Q. How many would you say?

A. Oh, that is a hard question to answer, I mean.

Q. I will take your guess.

A. I would like to answer it.

Q. I will take your guess.

A. Maybe eight or ten.

Q. Not more than ten?

A. I should say that.

Q. Did you notify them by letter or wire, or how?

A. Usually by word of mouth, when a salesman would call on me that question would come up, and as a defense the question would be answered that Hartford were infringing our patents.

Q. That is by salesmen you mean the man Amsler-Morton Company had on the road?

A. That is right.

[fol. 3535] Q. Now, Mr. Geer, you made several attempts to sell your business to Hartford or others, did you not?

A. Only in answer to a proposal.

Q. You never initiated any attempt yourself?

A. We never initiated. We were satisfied.

Q. Did you attend a conference on April 20, 1928, in Pittsburgh, which had been arranged by your counsel, Mr. Lawrence; this is a conference that preceded the conference

at Hartford to which you testified? Do you remember such conference?

A. Would you name some of the members that were present?

Q. Yes, I will if I can.

A. Who?

Q. I say I will if I can. Just a moment. Mr. Lawrence of Pittsburgh represented you in April, 1928, did he not?

A. Mr. Ed Lawrence?

Q. Yes?

A. I don't think Mr. Lawrence ever represented us on lehrs because he was retained by Hartford Company at that time.

Q. You think at that time he was not your attorney?

A. I doubt it very much. We did give him some business, but along other lines.

Q. I am suggesting to you that a conference was arranged by him in his office on April 20, 1928?

A. Perhaps. There were so many of them, so many visits. I would not deny it and I would not affirm it.

Q. But you have no present recollection of having been [fol. 3536] there?

A. No. I don't believe so.

Q. Do you have any recollection of an arrangement having been made for you to go to Hartford and bring your drawings and patents, patent papers, whatever you call them?

A. I can't say we ever made an arrangement but we were invited there—to bring along any information we would care to.

Q. But you have now no recollection of such an agreement or understanding having been arrived at at a conference in Mr. Lawrence's office on April 20, 1928?

A. I don't remember of it. It is possible that such a conference was held.

Q. Have you any recollection of a general discussion at that conference as to sale of your company's lehr business?

A. No. I don't remember that. We made a number of offers to different companies at different times, and that is just another one.

Q. Do you remember a conference down at the Carr-Lowrey plant in December, 1934?

A. I remember that very well.

Q. You were down there at that time?

A. Yes.

Q. What did you discuss at that time?

A. We called Mr. Jaspert back from a hunting trip to [fol. 3537] meet us down there ostensibly and primarily to see our lehrs in operation.

Q. Who was at that conference?

A. Mr. Parham and about four or five other members of the Hartford Company.

Q. Can you name them? Name them please.

A. I only remember the more important members of the Hartford-Empire Company. I don't remember the lesser lights.

Q. If you will name the more important members at the conference I will accept your selection?

A. Mr. Parham.

Q. Do you remember anyone besides Mr. Parham being there?

A. I believe that Mr. Eldred was there.

Q. And those are the only two you remember?

A. Yes, but there were three or four others.

Q. They looked at that time—they inspected the Amsler-Morton lehrs at the plant, did they?

A. Oh, to a small extent, yes.

Q. They told you, did they not, at that time that they believed your lehrs infringed Hartford patents?

A. They told us every time we saw them that they infringed.

Q. So that there was no doubt in your mind that that was what they claimed?

A. They told everybody that on every machine they ever made.

Q. We are speaking now of the lehrs made by Amsler-Morton. When you say now every machine they ever made, [fol. 3538] did you mean every machine the Amsler-Morton made?

Mr. Freed: I object. He answered that question two or three times.

A. I mean that every machine that Hartford put on the market they covered with about ninety patent numbers. No matter what would be built they would accuse the other fellow with infringement, and I put that lehr and everything else in the same category.

Q. As a matter of fact, your lehr did infringe, didn't it?

Mr. Freed: I object, if the Court please.

The Court: I think he answered that two or three times.

Mr. Goodrich: Very well.

Q. Going to the conference in 1934, which you testified Mr. Collin and Mr. Hazelton, and I believe Mr. Frazier, came to your office, or you met them somewhere?

A. They came to our office.

Q. Were the three of them together at that time?

A. Yes. They were in the office together. I don't know whether they came together or not.

Q. You interviewed them together?

A. Yes, Mr. Morton and I.

Q. Did any one of these gentlemen state to you he had been sent to you by Hartford-Empire?

A. No. I would not say that.

Mr. Goodrich: I move to strike out the latter part of [fol. 3539] the answer.

The Court: The latter part may go out.

Q. Did either of them state to you Hartford-Empire was putting up any money for the purchase of the Amsler-Morton business?

A. They did not tell us where the money was coming from.

Q. So the answer to my question is no, is it?

A. That is right.

Q. Did anyone of them state to you that Hartford had promised a license to Amsler-Morton to cover the proposed new company?

A. Mr. Hazelton told us he could get the rights to build the Hartford lehr, that it would be part of the agreement.

Q. That is exactly what I want to know. He didn't say he already had the rights of license to build?

A. No. He said he had the influence.

Q. Never mind the influence. What did he say to you?

A. The question never came up. I can't answer that. He didn't say whether Hartford would give him that right to offer the lehr or not.

Q. Let me ask you again, Mr. Greer, did he state to you that he assure the new company a license to make the Hartford lehr?

A. He did not say to make them. He said to build them.

Q. Then your answer is he did assure you that the new company would have a license to build the Hartford lehr?
[fol. 3540] A. We considered it as assurance.

Q. Can you remember the exact words?

A. It is pretty hard to remember so far back. I think I stated that prior to this time that he said he would give us all the Owens-Illinois tank business and the right to build the Hartford lehr and considerable other business that he could throw into the pot.

Q. That was Mr. Hazelton?

A. Yes.

Q. And Mr. Collin and Mr. Frazier were there besides yourself?

A. Yes.

Q. Anybody else?

A. And Mr. Morton.

Q. Does your company build container lehrs in this country for export?

A. For export—no, we ship some drawings and things of that character to foreign countries.

Q. Suppose you got an order from Brazil for this container lehr picture in your advertisement on page 152? Would you make that here?

A. No. That would be built down there.

Q. Do you have a factory in Brazil?

A. No.

Q. How would you sell this lehr to people in Brazil?

A. We are not selling that lehr down there anyway but our agent would take care of that down there.

[fol. 3541] Q. You have an agent in Brazil?

A. Not in Brazil; Buenos Aires.

Q. And he takes care of all South America?

A. Yes.

Q. But you left me very definitely with the impression that you were building this lehr for sale abroad?

A. Yes, in any country where the patents do not obtain.

Q. And where you have a machine shop?

A. We don't build anything. We just furnish the drawings.

Q. And have it built by whomever can build it in that country, is that right?

A. Yes.

[fol. 3542] Q. How much did you charge for the drawings?

A. Plenty sometimes.

Q. Beg pardon?

A. Plenty sometimes.

Q. Give us a price range?

A. We quoted everywhere from $2,000 to $200,000.

Q. You charge $200,000 for drawings?

A. Yes, sir.

Q. On this lehr?

A. Not on that lehr but some equipment we built.

Q. Let's talk about this lehr.

The Court: What is the purpose of this examination?

Mr. Goodrich: I wondered how the lehrs were built in the United States for export trade. I will leave that subject.

Q. Did the lehr prices continue at $9,500, which I believe you said was the price of your lehr in 1934?

A. For the standard 4x70 foot lehr the price was $9,500 and sometimes less. If it was a special lehr sometimes it ran considerably more.

Q. But the fact is the prices on lehrs did come down; they are lower now than in 1937, are they not?

A. Yes, since the Surface Combustion come into the business.

Q. And it is a fact, is it not, that about the time your Swindell suit, Hartford brought out a new and cheaper lehr?

A. Yes, but the royalty still obtained. I would say they are cheaper to build but they still obtain the royalties.

[fols. 3543-3544] Q. They are still licensing on royalties?

A. Yes.

Q. But in your opinion they are not cheaper than the lehrs Hartford was leasing?

A. Oh, I think the first cost is less.

Q. By "first cost" what do you mean?

A. I mean the initial down-payment; I will put it that way.

Mr. Goodrich: Your Honor, I think I could stop here until the Swindell papers come on.

The Court: You may proceed with your re-direct examination.

Redirect examination by Mr. Freed.

Mr. Freed: At this time I want to offer in evidence, this agreement which was introduced here between Hartford-Empire Company and Swindell Brothers, dated September 29, 1930, and I want to read just one paragraph from this agreement. (Marked Government's Exhibit 739.)

I likewise want to offer at this time, the agreement dated September 16, 1929, between the same parties, that is marked Government's Exhibit 740.

Mr. Haight: We would like the privilege, if Your Honor please, of withdrawing those original agreements and substituting photostats.

The Court: That may be done.

Mr. Freed: We have no objection.

The Court: They may be admitted.

* * * * * * *

[fol. 3545] Q. Now, you stated, Mr. Geer, that you defended, or the Amsler-Morton Company defended, the suit that was filed against Swindell Brothers?

A. We took a very active part in the defense of that suit. We intervened.

Q. You, yourselves, weren't party to the suit?

A. We were intervenors. I don't know.

Q. You weren't sued originally as defendants?

A. No.

Q. Were you ever sued by Hartford-Empire for infringement?

A. Never.

Q. Now, what was the outcome of that litigation against Swindell Brothers?

A. We won the case in the lower court before Judge Chesnut.

Q. That was in Baltimore?

[fol. 3546] A. In Baltimore; after about ten days' trial.

Q. Then what happened to it in the reviewing court?

A. Then it was reversed in Judge Parker's court in the Fourth Circuit Court of Appeals.

Q. And what did that litigation cost?

A. It cost us $50,000 in cash and probably another $20,000 in traveling expenses and salaries, and so on, in connection with work leading to the collection of all the data and the maintaining of it in order, and so on.

Mr. Freed: That is all.
The Court: Any cross-examination at this point?

Recross-examination by Mr. Goodrich:

Q. After Judge Parker's court, as you call it, reversed the decision of the lower court, you asked for rehearing in the Fourth Circuit Court?
A. Yes, because——
Q. Never mind why; you just did?
A. Yes.
Q. And you got a hearing?
A. Yes.

Mr. Freed: Let him finish his answer.
Mr. Goodrich: He finished, he answered the question.
Mr. Freed: Counsel is interrupting the witness.
The Court: I think the witness may have the opportunity, on cross-examination, to give an explanation, if he desires.

Q. What explanation do you desire to give of the rehearing in the Fourth Circuit?
[fol. 3547] A. Because certain things were left out of the brief by the Hartford Company.
Q. And because things were left out of the brief of the Hartford Company, the defendants asked for a rehearing in the Fourth Circuit Court?
A. Yes. The defendant—we did, I don't know whether we were the defendant in that case or not.
Q. All right.

* * * * * * *

Q. And the Circuit Court, on rehearing, affirmed its prior decision, did it not?
A. It amplified it somewhat, made it worse, more difficult for us.
[fol. 3548] Q. Following that you applied for certiorari to the Supreme Court of the United States?
A. Yes.
Q. And that was denied?
A. Yes.

Mr. Goodrich: At this time I ask the Court to take judicial notice of the decision of the Fourth Circuit Court of Appeals, two decisions, rather, in the case of Hartford-Empire Company vs. Swindell Brothers and Amsler-Mor-

ton Company, intervenor, one found in 96 Federal 2nd, 227, and the other in 99 Federal 2nd, 61. And for the Court's convenience I offer two pamphlets furnished by the clerk of that court.

Mr. Freed: Our complaint makes reference to that, if the Court please.

The Court: You want to mark them as exhibits?

Mr. Goodrich: Yes, I think so. I ask the Court also to take judicial notice of the decision of the District Court in the case by the same style, Chesnut, Judge, which is found in——

Mr. Haight: We haven't the citation at the moment.

Mr. Goodrich: Have you a pamphlet?

Mr. Haight: We haven't the citation for the moment but we will furnish it.

Mr. Goodrich: We wish to offer the opinion itself in evidence.

The Court: H-5068 and H-5069, two opinions.

* * * * * * *

[fol. 3549] Q. Following the final decision in the matter, Mr. Geer, your company sent out letters to the glass manufacturers to whom you had previously sold lehrs, did you not, or at least to some of them?

A. At the request of the Hartford Company, yes. They asked us to send those letters out in an effort to help them to settle the situation with the lehr owners.

Q. You are quite sure that these letters were sent out by the request of the Hartford Company?

A. Well, that came up in the final discussion and some of the previous discussions, too, that we would assist them in every way to try to bring these lehr owners into line.

Q. The owners of the infringing lehrs?

A. Yes. We did help them out to the best of our ability.

[fol. 3550] Q. I show you this letter of February 9, 1939, and ask you if you can identify that as a sample, or as one of the letters which you sent out to the glass manufacturers?

A. That looks like the letter. I wouldn't be able to say it is the exact letter but it looks like it.

Q. To the best of your belief this is a copy of the exact letter sent out by you?

A. I think so.

Mr. Goodrich: I ask to have it marked. I will offer it in evidence as H-5070.

Q. The Amsler-Morton Company is still taking out patents?

A. Not on lehrs.

Q. Not on lehrs but on other inventions?

Q. Oh, we have been taking out patents regularly for twenty years. We never stopped.

Q. And still are doing it?

A. Oh, certainly.

Q. Both on your steel equipment and your glass equipment, and whatever else you invent in your shop?

A. Yes.

Q. One more question. Do you recall—do you know Mr. Chauncey Frazier?

A. Very well.

Q. Who is he, please?

A. He is president of the Frazier-Simplex Company, formerly Simplex Engineering Company.

Q. Did he not interview you at one time respecting the sale of Amsler-Morton to Simplex?

[fol. 3551] A. He may have. We were interviewed so much about that sort of thing I can't remember all the occasions.

Q. Can you remember—you do remember Mr. Frazier saw you about it?

A. In connection with Mr. Hazelton?

Q. No, by himself, in connection with the sale to the Simplex?

A. I don't remember Mr. Frazier's ever making a direct offer. He didn't have money enough to buy it.

Mr. Goodrich: I move to strike that answer.

The Court: Yes, it will be sustained.

Q. He checked the books of your company in connection with the negotiations for the purchase by Simplex?

A. No, the only checking I know of was done at the time, the only check of our books was done after the visit of Mr. Collin, Mr. Frazier, and Mr. Hazelton; that is the only time I remember.

Q. Who did that checking, do you know?

A. I think we did the work but I think it was approved by the George A. Sable Company, Pittsburgh.

Mr. Goodrich: If Your Honor please, I now offer the letter that has been marked H-5070, and ask leave to substitute further copies for it.

The Court: It will be admitted.

Mr. Goodrich: I will not take the time to read it. I have no further questions of the witness.

Mr. Middleton: May I have the opportunity of two or three questions? I will make it as brief as possible.

[fol. 3552] Recross-examination.

By Mr. Middleton:

Q. Mr. Geer, the Simplex Manufacturing Company is located at Washington, Pennsylvania?

A. That is correct.

Q. You had been acquainted with Mr. Frazier for a considerable time before the time in 1934?

A. That is right.

Q. You knew he represented Simplex, was employed by it?

A. Yes.

Q. You knew Hazelton for a considerable time before that, did you not?

A. Yes.

Q. You knew he was heavily interested in Simplex, did you not?

A. Not so much in later years. I understand now he only owns a small—he at that time only owned a small portion of the stock in Simplex Engineering Company. Frazier owned the large block of it.

Q. Just what he owns you don't know?

A. I have seen reports on it.

Q. But you did know he was interested in Simplex?

A. Yes.

Q. And Mr. Frazier, you understood, was the owner of the majority interest in it?

A. That is right.

Q. Mr. Collin was the first one to approach you in 1934 regarding the sale of Amsler-Morton's glass business?

A. That is right.

Q. And that was in late January or early February, I [fol. 3553] believe you said?

A. Yes.

Q. Mr. Collin then came back to see you a little later, did he not?

A. I think so.

Q. And each time that Mr. Hazelton talked to you, Mr. Collin was with him, was he not—that is, each time he talked about that particular subject?

A. I cannot say whether Mr. Collin was there at the time or not, that is, whether he was in the conference at that time.

Q. You recited only two occasions, as I recall it, that Mr. Collin saw you regarding the sale of Amsler-Morton assets?

A. I think that is so; I feel sure.

Q. Mr. Hazelton only saw you once about it, according to your testimony?

A. That is right.

Q. Mr. Collin was with Mr. Hazelton on that one occasion?

A. He was there; I am not sure he was in the office at that time; that is, I am not certain he was in the room at that time.

Q. He was with Mr. Hazelton while Hazelton was talking with you, was he not?

A. I think so.

Q. And all the time?

A. I wouldn't say all the time, because Mr. Morton talked to Mr. Collin and took Mr. Collin in another room [fols. 3554-3609] and talked to him, and Mr. Collin was in another room at one time talking to me.

Q. They left together, Hazelton and Collin?

A. Yes, and they came together, too.

Q. Before they left they had engaged in some joint conversations?

A. Yes.

Q. Did you then know who Mr. Collin was?

A. Yes.

Q. You knew he was a broker in Toledo?

A. I knew he was a broker that put the Owens-Illinois Glass Company together, because I saw an account of it in the paper.

Q. You knew he was in some independent business other than Owens-Illinois?

A. Yes, and I also knew he was a director of the Owens-Illinois Company.

Q. But you knew he did not spend his time operating the Owens-Illinois Glass Company, didn't you?

A. No, I didn't know. I don't know. I don't suppose I ever thought of it. It never occurred to me what connection he had with them because he was an official.

Q. And neither of those gentlemen told you then they were representing Owens-Illinois Glass Company, in talking to you, did they?

A. No, they were very careful not to say who they represented.

* * * * * * * *

[fol. 3609] So far as Hazel-Atlas is concerned, we do not want to add any affidavits or to submit any additional reply briefs.

Mr. Haight: I had thought, if Your Honor please, it was the understanding that we were to, after each exchange of briefs, were to file replies, if we wanted to. Accordingly, I handed your secretary this morning a copy, and I ask Your Honor for permission to file it now. I did not have it ready until just before the argument started.

The Court: If there are any further exchanges, I suggest that they be prepared, if possible, over the vacation, and be perfected next week, so that there will be no delay beyond next week.

Mr. Isseks: We will have ours by Tuesday at the latest. We will have them served before we come back on Tuesday.

Mr. Haight: No payments are due from Hartford until April 30; but I will assure Your Honor that no payments will be made until Your Honor has disposed of this motion.

Thereupon the hearing upon the motion was adjourned.

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[fol. 3610] (Mr. C. B. Belknap resumed the stand.)

The Court: You may proceed.

By Mr. Isseks:

Q. Mr. Belknap, were you in any way connected with the negotiations in the early part of 1933 which ultimately resulted in the so-called Ed Miller and Lynch transaction?

A. I might have been, incidentally, I don't recall.

Q. Don't recall anything about it?

A. No.

Q. Isn't it a fact you participated in the negotiations with the Hartford representative, which led up finally to the

sale by the Ed Miller Company to the Lynch Company of the assets of the Ed Miller Company for $450,000?

A. I wouldn't say that I participated in it. I might have done some incidental things in connection with it.

Q. Do you remember what you did?

A. No, sir.

Q. Don't you remember you attended conferences at which it was agreed as to the purchase price and as to how the payments should be made, namely, a certain amount by Owens for certain patent rights, suction patent rights; and certain payments by Hartford for certain feeder rights, and the balance should be raised through one of Mr. Levis' companies in connection with taking the stock of the Lynch Corporation?

A. No, I had very little to do with that. I might have [fol. 3611] drawn the contract with relation to what Owens was purchasing in regard to suction rights.

Q. Is that a definite recollection on your part, you had very little to do with it?

A. That would be my recollection.

Q. Don't you remember you participated in conferences with F. Goodwin Smith?

A. I might have talked with Mr. Smith once or twice, but incidentally, as I recall.

Q. Don't you recall you participated with Mr. Safford and made the necessary arrangements as to where the money would be obtained?

A. No, I cannot recall it.

Q. See if I can refresh your recollection. I show you Government's Exhibit 310, which is a telegram to F. Goodwin Smith, dated June 12, 1933, signed by Mr. Levis. See if that refreshes your recollection that arrangements were made in the beginning, through Mr. Harry Collin, a director of Owen-Illinois, and also a member of a brokerage house in this town, for some of the Hartford people to go to Columbus and look over the Miller plant?

A. (After examining the exhibit.) No, it would not refresh my recollection at all.

Q. Don't you remember that you were active in this connection by reason of the fact that the option which Hartford had in connection with the patent applications of Whitall Tatum, namely the Headley & Thompson patent applications, were under consideration about the same time?

[fol. 3612] A. I recall they were up under consideration about the same time, and in the year 1933; I don't know the month.

Q. I show you original letter addressed to you by Mr. F. Goodwin Smith, signed "F.G.S." and see if that does not refresh your recollection?

Mr. Wall: Does it have a date?

Mr. Isseks: I better mark it. I now ask to have marked as the next exhibit, letter dated June 16, 1933, addressed to the witness by "F.G.S.", and attached to it is a letter, enclosed copy of letter dated June 15, 1933, signed by the Whitall Tatum Company by F. C. Tatum.

The Court: All one number?

Mr. Isseks: Yes.

The Court: Any reply to it?

Mr. Isseks: No, no reply.

(Letter of June 16, 1933, signed by "F.G.S.", marked Government's Exhibit 741, and enclosure, letter dated June 15, 1933, addressed to Mr. F. Goodwin Smith and signed F. C. Tatum, marked Government's Exhibit 741-A.)

Q. I ask the witness whether he received that letter in the regular course of business?

A. (After examining same.) Yes, it bears my initials and I received it in the regular course of business, but this letter attached to it refers to an entirely different matter than the one you asked me about in that telegram.

Q. We will come to that. You say it is a different matter?

A. Yes. This relates to the question of Headley & Thompson. You are asking me about the other telegram [fol. 3613] with reference to the Ed Miller purchase matter.

Q. Do they have any connection with each other?

A. I don't recall they had any connection other than the clearing up of the whole general situation which the forming machine found itself in in '32 and '33, similar to that which the feeder situation was in in '24.

Q. Wasn't it, Mr. Belknap, a part of the plan of the Owens and the Hartford people, at or about the date of this letter, June 16, 1933, to clean up, as you just stated—I think those were your words, if they are not, you will correct me—the whole forming machine situation?

A. It was part of the general situation to clean it up so that there could be a license given broadly covering forming machines under the Headley & Thompson patent.

Q. By cleaning up the forming situation, what did you have in mind? You used the words, I didn't.

A. I had in mind the fact there were a lot of interference involved in the forming machine, and it was about in the same muddled state the feeder situation was in the early years.

Q. Who were in interference?

A. Well, originally Owens was in interference on this Graham machine.

Q. With whom?

A. With Headley & Thompson.

Q. When was that?

A. I can't recall the year.

Q. Sometime prior to 1925, isn't that right?

[fol. 3614] A. Well, whenever it was. The Graham patent issued and Headley & Thompson copied the claims of it because we were in interference, and then that interference went on with other parties. I think Lynch was one of the parties, for a long period of time.

Q. But Owens stopped the interference proceeding as far as Owens was concerned after it participated in the option in 1925?

A. Well, we were automatically stopped in the Patent Office because, as I recall it, our Owens' date of conception was subsequent to the other man's filing date.

Q. Did you continue in the interference proceeding in interference in connection with the Headley & Thompson application after the option was taken in 1925?

A. I wouldn't think we did, because of the rights we had under the option.

Q. But you didn't continue the interference proceedings so far as Graham was concerned?

A. No, sir.

Q. So that in 1933 your Company, the Owens-Illinois Glass Company, was not in any interference proceedings with Headley & Thompson; isn't that right?

A. Not to any pending proceedings, but we had some claims. Under the option our patent covered the machine we were using, but we certainly were interested.

Q. Were you in interference? You volunteered the statement that you were originally in interference with

Headley & Thompson in 1933; were you then in interference with them?

[fol. 3615] A. No, other than whatever option we had with Headley & Thompson.

Q. You said you wanted to clear up some interference proceedings. Was anybody else in interference?

A. There was an application of Bridges, of Lynch, that was in interference.

Q. Was your company in any way connected with the Lynch Corp.?

A. No, sir.

Q. Did you have any contact with the Lynch Corporation of any kind?

A. We might have had some ordinary purchase contracts for some of their machines we had under our contract.

Q. Did you have any legal or equitable interest in the Lynch applications which were in interference with the Headley & Thompson applications?

A. Not that I recall.

Q. Was anybody else in interference that you know of, on the forming machine? You said you wanted to clean up the forming machine interferences. If I misquote you, I wish you would correct me, as I do not want to misquote you.

A. No, I didn't. I said the forming machine patents which had been involved because of this interference, and the resulting patent that came to Headley & Thompson.

Q. You wanted to clean them up?

A. Yes, because we wanted to use the machine.

Mr. Middleton: May it please the Court, the witness isn't confining this to the interference proceedings. I think, inadvertently, he is questioning him as if he was [fol. 3616] referring only to the interference. I think it is broader than just the interference.

Q. Do you want to make any additional statement, in view of Mr. Middleton's statement?

A. No, I think I have covered it.

Q. Was there anybody else in interference so far as you know, with Headley & Thompson, besides Lynch, through Mr. Bridge's application?

A. Without examining the interference files I couldn't say who was.

Q. Was the Ed Miller Company in interference, so far as you know?

A. Not as far as I know.

Q. So as far as you knew at the time Lynch was in interference with Headley & Thompson, in that right?

A. Yes.

Q. And your Company, through Hartford, had an interest in an option which Hartford had to acquire the Headley & Thompson application?

A. Yes, sir.

Q. Did you have any contractual obligation with Ed Miller in any way?

A. Other than we might have had a contract to buy certain machines, or something, but no other contract.

Q. And Ed Miller at that time was manufacturing forming machine equipment, was he not?

A. My recollection is they were manufacturing one type of pressing machinery, but I do not know that they had any [fol. 3617] narrow-neck machines.

Q. They were selling that to manufacturers of glassware, were they not, whatever they were making?

A. Yes.

Q. Were they selling it to the Owens people?

A. I think we had some Miller machines.

Q. And they were selling it to other manufacturers of glassware that were in competition with your company, were they not?

A. Yes, I assume they were selling it to glassware manufacturers generally, whoever wanted their type of machines.

Q. Who were their competitors at that time, the Ed Miller Company, so far as you know?

A. I don't know of anyone else that was making that type of machine.

Q. Wasn't Hartford making that type of machine?

A. Not that I know of.

Q. Were they making any type of forming machines?

A. I never knew much about the Hartford forming machines other than their I. S. machine.

Q. Which is a narrow-neck machine?

A. Yes.

Q. And Lynch Corp. was making a narrow-neck machine?

A. Yes.

Q. As far as you knew at that time the Ed Miller type of forming machine was being sold outright, was it not?

A. As far as I knew.

Q. And the Lynch forming machine at that time was [fol. 3618] being sold outright?

A. I think so.

Q. I say "outright", I mean with no strings of any kind attached. Your recollection is that is what they did?

A. That would be my recollection.

Q. But, on the other hand, the Hartford forming machine, whenever it was selling, whether I. S. or anything else, was sold—excuse me—was distributed on a license fee and royalty fee basis, isn't that right?

A. My recollection, yes.

Q. As far as you knew?

A. Yes.

Q. As far as you knew in June, 1933, the Owens-Illinois Glass Company, of which, I think you testified, you became Vice President in April, 1933, was participating in one-third of the royalties of Hartford over and above $850,000, which was the basis which they were allowed for their expenses, is that right?

A. Not quite right. We were participating in the royalties on the feeders and the feeder fed machines, but not on the lehrs, stackers and other equipment they were putting out.

Q. But you were participating on forming machines to the extent they were fed by feeders?

A. Yes, sir.

Q. In other words, you were participating on narrow-neck forming machines where there was a royalty or license fee collected by Hartford?

A. Yes.

[fol. 3619] Q. And if Hartford was putting out—you said you didn't know—if they were putting out a pressed and blown forming machine for use attached to a feeder, you were also participating in that royalty and license fee?

A. That would be my interpretation of the contract we then had.

Mr. Isseks: I neglected to offer in evidence Government's Exhibits 741 and 741-A, and I offer them at this time.

The Court: They may be admitted.

(Government's Exhibits 741 and 741-A read by Mr. Kramer.)

Q. Did I understand you correctly to say that there was no connection between the Whittal Tatum option and the Miller machine, or did I misunderstand you?

A. I said as far as I knew there wasn't. I had very little to do, in fact I cannot recall anything I had to do, in connection with the Ed Miller.

Q. Did you also say that Government's Exhibit 310, which is a telegram addressed to Mr. F. Goodwin Smith by Mr. Levis, on June 12, 1933, which reads as follows, was never brought to your attention, rather, the subject-matter thereof: "Harry Collin advises he has made arrangements with Miller Columbus for representatives to call at his plant on Thursday of this week to go over his patent situation and see his property so that you can see their report and thus be prepared for opening negotiations for acquiring his properties. Advise me if this date is satisfactory, [fol. 3620] so Collin "can confirm. William E. Levis." It does not refresh your recollection at all that you were familiar with the matter at the time?

A. No.

Q. Now, I show you Government's Exhibit 311, stipulated as to genuineness by the Owens-Illinois, and that you wrote it, and I will ask you if you didn't write that letter a week later, eight days later, to Mr. F. Goodwin Smith, discussing this very subject-matter of Whittal Tatum and Miller and the visit by the Hartford representatives to Columbus, Ohio?

A. (After referring to same.) It refreshes my memory to the extent I apparently had Mr. Hoge of our patent department investigate the patents relating to the Miller machine and arranged to have him go to Columbus to examine the machines and to make a report on them.

Q. You wrote that memorandum, didn't you, Government's Exhibit 311?

A. I did.

Q. See if I cannot refresh your recollection a little. First of all, in the first paragraph of the letter you acknowledge receipt of the letter of June 16, which I offered in evidence as Government's Exhibit 741, with attached 741-A, and you say you discussed the matter, particularly regarding the

Whittal Tatum option and that Mr. Levis was well pleased. You wrote that?

A. I wrote that. When you asked me originally about the letter, I said I remembered it.

[fol. 3621] Q. Then you say in the third paragraph: "With reference to the patent situation on the Miller Machine at Columbus, I understood that it was set up so that when your representatives went down to Columbus they were going to look into the whole situation including the patents. I have been having Mr. Hoge pick out any of the Miller patents which we have copies of, but in view of your talk with Mr. Levis, I have arranged to have Mr. Hoge go to Columbus tonight and spend tomorrow and possibly Thursday going into this matter." Does that refresh your recollection your company, and you particularly, had something to do in an effort to get Hartford to buy out Miller?

A. No, I don't know Hartford ever bought out Miller.

Q. In respect to that the record is clear. Hartford didn't buy it out but Hartford's money was used. I am not asking you that. I am asking you whether it does not refresh your recollection you participated in conferences, correspondence and negotiations, in an effort to get Hartford people to go to Columbus, and, as Government's Exhibit 310 says, the telegram, open negotiations for acquiring Miller properties? Want to look at the telegram? (handing to witness.) I ask you whether you participated in that? You see Government's Exhibit 311. My question is whether you didn't participate in the activities, whatever they were, as shown by the correspondence, Government's Exhibits 310 and 311.

A. I certainly participated insofar as the activities set forth in that letter of June 20, 1933, but I would say what [fol. 3622] contact I had with it was very incidental.

Q. You still say it was very incidental?

A. Yes.

Q. Before, you said you didn't remember about the Columbus situation, but this letter refreshes your recollection, does it not?

Mr. Middleton: I object to the question.

The Court: Overruled. He may answer.

A. Just to the extent I testified.

Q. Your interest at that time was what? What was your interest in sending Mr. Hoge down to Ed Miller Company? You have testified your company was not in interference proceedings; you were a customer of his, might have been a customer of Ed Miller on pressed and blown ware machinery; now, I want to know what your interest was, what the nature of your interest, as vice-president of Owens-Illinois, was, in sending Mr. Hoge, of your patent department, down to Ed Miller, who was manufacturing pressed and blown ware machines, sold to various manufacturers throughout the United States, including your company.

A. The only thing I can recall is what I previously stated, we were interested in getting the whole forming machine situation straightened out.

Q. Why, sir, if I may ask the broad question?

A. Because we were using a large number of forming machines, we were essentially a manufacturing company, if there wasn't a right to get those machines we might not be able to continue that part of the manufacture.

[fol. 3623] Q. But you had an option, and at least you were part-owner of the Headley-Thompson application; what was your interest in Ed Miller?

A. I took no special interest in Ed Miller.

Q. I am talking about your matter, I am not talking about Headley-Thompson under which you had an option. Why were you sending Mr. Hoge, of your patent department, down to Ed Miller? Do you understand my question?

A. Yes.

Q. That is all I am trying to find out. What was Owens-Illinois' interest, the largest manufacturer of glassware in the world's interest in the Ed Miller business?

Mr. Middleton: May I object to the characterization?

Mr. Isseks: I will ask the witness a question.

Q. In 1933 was Owens-Illinois the largest manufacturer of glass containers in the United States?

A. I would say so.

Q. Was it the largest manufacturer of glass containers in the world, so far as you knew?

A. I couldn't answer that because there were some European companies that were quite large.

Q. I will modify my question. What was the interest of Owens-Illinois Glass Company, the largest manufacturer

of glassware in the United States, in Ed Miller Company, the manufacturer of pressed and blown glass machinery sold outright to its various customers?

A. I don't recall any interest other than what I have stated.

[fol. 3624] Q. May I ask the witness to restate it? I am sorry; what was the interest?

A. I said I had—the contact I had with that had to do in connection with trying to clean up the whole forming machine situation so that they would not continue this general type of patent controversy that had previously existed in the feeder situation.

Q. I asked you the question, was Ed Miller in interference with Headley & Thompson, as far as you know?

A. I am trying to draw a distinction between simply interferences, and claims of patents which may read on to other machines.

Q. Was Ed Miller claiming it was prior to the Headley-Thompson, do you know?

A. Not that I recall.

Q. Headley & Thompson—you had an option on it, didn't you?

A. Yes.

Q. Through Hartford-Empire. You had no other reasons than the reasons already given? I will give you the whole field; any reason you want to give.

A. No. Except there was a tremendous number of claims in patents which overlapped. It is a very difficult thing to determine what patents cover what machines.

Q. But who, who was claiming what at this time? Lynch was in interference with Headley & Thompson, you have testified that. Was there anybody else claiming anything, as far as your present recollection goes?

A. I think O'Neill claimed that Lynch infringed some of [fol. 3625] his patents. Whether Ed Miller made any such claim, I have no recollection.

Q. But by this time you had bought O'Neill out. Remember the closing date was June 5th or 6th, or sometime in May. The O'Neill deal was over.

A. Well, whatever the date of the contract.

Q. Before this session, the last exhibit I showed you was a memorandum written by Col. Brown, or written by somebody else, saying the O'Neill deal was over prior to this time. You had it by that time?

A. We purchased the O'Neill suction assets.

Q. Hartford had purchased the feeder assets, whatever they were?

A. Yes.

Q. So Hartford and Owens had everything O'Neill had. Was anybody else claiming anything; was Ed Miller claiming anything?

A. I don't remember.

Q. Do you remember participating in conferences at Hartford regarding the Lynch situation, shortly after Government's Exhibit 311, which is dated June 20, 1933?

A. I may have attended a conference at Hartford.

Q. See if I can refresh your recollection. I show you Government's Exhibit 321, which is dated July 19, 1923, telegram to Mr. Werbe in Colorado Springs, from Mr. Bridges, it says: "Collin phoned that Belknap obtain very satisfactory agreement with Smith. Uz and I will meet Levis Friday afternoon at Toledo." Does that refresh [fol. 3626] your recollection that at or about that time you had various conversations with F. Goodwin Smith regarding the subject-matter relating to the arrangement between Hartford, on the one hand, and the Lynch Corporation on the other hand?

A. It would not refresh my recollection I had various conferences. As I told you, I have recollection of having attended some conference.

Q. With Mr. F. Goodwin Smith?

A. Yes.

Q. Do you remember Mr. Safford being present—secretary of Hartford?

A. In the absence of something to refresh my memory, I would not recall.

Q. Do you remember you came to Hartford sometime in July, 1933, and brought a memorandum of an outlined or proposed agreement which you delivered to Mr. F. Goodwin Smith and Mr. Safford?

A. It might be, but I don't recall it.

Q. I show you Government's Exhibit 322, which has a pencil notation in the upper right-hand corner, "7-18-33", and a notation, identified as being in Safford's handwriting, "Handed to us by C.B.B. at Hartford." I will ask you first whether you remember seeing the memorandum itself, not the notations thereon?

A. (Witness examines same.)

Q. Have you read it?

A. Well, I don't recall the specific memorandum. I do recall various parts of the subject-matter discussed there.

[fol. 3627] Q. Does the memorandum look familiar to you?

A. No, I wouldn't say it looked familiar to me.

Q. My question is whether you remember handing it to Mr. Safford. You notice the pencil notation, which has been identified as the handwriting of Mr. Safford, "Handed to us by C.B.B. at Hartford." Does that refresh your recollection at all that that is a memorandum you handed to them?

A. No, I have no recollection.

Q. Will you dispute you handed it to him?

A. No, I could neither affirm nor deny it.

Q. Look at the contents of the memorandum. Does it refresh your recollection that you had anything to do with the preparation of the memorandum?

A. Yes, it refreshes my memory that the Lynch people understood that they get a right to use all of the Owens Company patents covering feeder-fed machines, so that if we terminated our contract with Hartford, they would still have the right to use the Owens patents. I don't recall "B" because I don't see how Owens-Illinois could license the Ed Miller patents, if that is what it refers to.

Q. My question was whether you prepared the memorandum yourself, sir?

A. My answer was I could neither affirm nor deny I did. I have no recollection.

Q. My question before was whether you handed it to Mr. Safford and you said you neither affirmed nor denied it. Now you say you neither affirm nor deny having written it?

[fol. 3628] A. (After examining same.) No.

Q. Are you through?

A. Yes, sir.

Q. Is anything wrong with your memory, sir?

Mr. Middleton: I object.

Mr. Isseks: A perfectly proper question, Your Honor.

The Court: Objection overruled; he may answer.

A. I think I have a reasonably good memory.

Q. What is your recollection of the nature of the proposed deal, or plan, with regard to the forming-machine situation that you discussed with F. Goodwin Smith? At any time you did talk with him about it?

A. That the Headley-Thompson broad patents should be licensed to Lynch and other manufacturers who were making the machines that we were buying.

Q. Did you talk about Ed Miller at all?

A. I have no recollection of talking about Ed Miller.

Q. Your memorandum, which on the face of it indicates you gave it to Mr. F. Goodwin Smith and/or Mr. Safford, talks about all Ed Miller patents to go to Lynch Corporation. Does that refresh your recollection?

A. (After leafing through memorandum.)

Q. Perhaps I overstated it. Let's read it:

"Outline of proposed agreement between O-I. and L.C."

I assume it is fair to state "O-I." was Owens-Illinois and "L.C." was Lynch Corporation. Is that right?

[fol. 3629] A. I think that is a fair assumption.

Q. "Subject to detailed changes by T. C. Werbe"—I assume it is fair to say Mr. Werbe was head of the Lynch Corporation?

A. I don't recall what his initials were.

Q. I think it is stipulated it was T. C.

Mr. Fess: Yes.

Q. Mr. Fess, Lynch counsel, says it is.

"1. Owens-Illinois to license Lynch Corporation to manufacture present type feeder-fed machines and equipment, and also any new future designed feeder-fed machines and equipment under the following patents: (A) All O-I patents covering feeder-fed machines. (B) All Ed. M. patents covering feeder-fed machines. (C) Any new patents covering feeder-fed machines."

Do you remember discussing that subject-matter with Mr. F. Goodwin Smith?

A. I remember discussing "A" and "C" but I don't remember discussing "B," because Owens-Illinois wouldn't license the Ed. Miller patents; we didn't have any title to them.

Q. But you might get them; it might be that contemplates the proposed plan; I think you testified you had in mind, I think you testified, cleaning up the forming-machine situation, and might have contemplated an acquisition of some kind; isn't that right?

A. It may have been contemplated; I have no reason to think——

Q. Have you any reason to question the memorandum, [fol. 3630] which is found in the Hartford file and bears the notation, "Handed to us by C. B. B. at Hartford"?

A. I think I could question any memorandum which I don't recall.

Q. I see; you think somebody fabricated it?

Mr. Middleton: I object.

The Court: Objection will be sustained.

Q. Do you have any reason to question somebody prepared this thing and made a notation on it which was contrary to the facts?

A. No, I don't have any.

Q. Then it says:

"2. O-I to agree for L. C. to manufacture all parts for O-I machines, any new developments or improvements, also complete O-I machines, also all parts for L. C. and other feeder-fed machines, the selling prices of which are to be figured on the same basis as L. C. now uses."

Does it refresh your recollection you had a conference with Mr. F. Goodwin Smith about that subject-matter?

A. No, not that I had a conference with Mr. Goodwin Smith about it. I do know Mr. Werbe wanted us to agree to let him make our Owens-Illinois suction machine.

Q. Did you have a conversation with Mr. Werbe?

A. Yes, I think I had this conversation with him on that particular point.

Q. Before you saw Mr. F. Goodwin Smith or after? The date on this thing on the top is July 18, 1933.

[fol. 3631] A. I would not recall the date.

Q. I will go to those conversations in a few minutes.

"3. L. C. in return agrees to the following: (A) Not to build or sell any vacuum machines, except at O-I request."

Do you remember having any conversation with Mr. Werbe about that subject-matter?

A. No, sir.

Q. Do you deny you did have it, or don't you remember?

A. No, I don't remember.

Q. Then it says:

"(B) To license O-I under all L. C. vacuum patents. (C) To license O-I under any new vacuum patents."

Do you remember talking about that subject-matter with Mr. Smith?

A. No. I remember discussing that matter with Mr. Werbe.

Q. But not with Mr. Smith?

A. No.

Q. Are you denying you talked about that matter with Mr. Smith?

A. No.

Q. Then it says:

"4. L. C. to take over and purchase (with L. C. stock) all drawings, tools and fixtures necessary for manufacture of O-I parts or complete O-I machines."

Did you talk about that with Mr. F. Goodwin Smith?

A. Not that I recall. I rather think I did not.

[fol. 3632] Q. When I say Mr. F. Goodwin Smith I also include Mr. Safford in all the questions. Your answers would have been the same, would they not?

A. They would.

Q. Then did you talk about that subject-matter with Mr. Werbe?

A. No.

Q. You don't recall. You would not deny it, though?

A. I deny it to the extent that I have no recollection of ever having discussed Owens-Illinois' taking any Lynch stock.

[fol. 3633] Q. I will ask you whether you had any discussions about that?

A. Not to my recollection.

Q. Then it says:

"5. L. C. to take over and purchase (with L. C. stock) all drawings, tools and fixtures necessary for manufacturing Ed. M. machines and equipment, also other physical assets wanted."

Did you talk about that subject matter with Mr. F. Goodwin Smith or with Mr. Safford?

A. Not that I recall.

Q. Did you talk about it with Mr. Werbe?

A. No, sir.

Q. Do you deny having a conversation with either one of those gentlemen I have mentioned relating to the subject matter of Item 5 of the memorandum?

A. No, I neither affirm nor deny.

Q. "6. L. C. to take over and purchase (with L. C. stock) all drawings, tools and fixtures necessary for manufacturing O'N'L machines and equipment, also other physical assets wanted."

Did you have any conversation about that subject matter with Mr. F. Goodwin Smith or Mr. Safford?

A. I might have. I don't recall. I do recall talking with Mr. Werbe about it.

Q. You did talk with Mr. Werbe about it?

[fol. 3634] A. Yes, sir.

Q. What was the conversation, please?

A. Mr. Werbe was running a machine shop for building machinery, and he wanted to get the right to build the repair parts for the O'Neill. I might say, in connection with this memorandum, that while I do not recall writing the memorandum or seeing it prior to its being brought into this case, there were all kinds of proposals for settlements of all kinds, many of which never were consummated; and you can find, in some memorandum or another, pretty nearly any kind of proposal.

Mr. Isseks: I understand that. Let us go to what happened.

Mr. Middleton: May we interject, Your Honor, with the suggestion that this memorandum was not followed in the drafting of any agreement between those parties? The agreement which is in the record and which speaks for itself is not in conformity to the memorandum which was the subject of so much examination.

Mr. Isseks: Let us see if we can explore that a little bit.

Q. Miller sold to Lynch for $450,000, did they not? The record shows that. Counsel will straighten me out if I am wrong.

A. I can't recall the amount offhand.

Q. For a sum of money?

A. That is my understanding.

[fol. 3635] Q. Miller sold to Lynch, and Lynch obtained the money in the following respects: $125,000 from Owens, and Owens got certain suction rights, and Owens gave to Lynch the O'Neill rights, did it not?

A. Yes, we gave—we made a contract with Lynch whereby we sold him a license to use our inventions in connection

with feeder-fed machines; and we purchased from him a right to use inventions in the Lynch machine under patents he had, so far as relating to suction.

Q. You gave him $125,000; in addition you gave him certain rights under the O'Neill suction devices?

A. That is my recollection of the sum of money. That whole question of money is set forth in a stock prospectus which Lynch put out at the time.

Q. But 125,000 came from Owens, did it not?

A. That is my recollection; 120 or 125 thousand; I think 125.

Q. You gave him certain rights in respect of O'Neill equipment patents?

A. Yes.

Q. Hartford simultaneously paid Lynch $125,000 for certain feeder rights, did it not?

A. I would not recall what Hartford's payments were; but they must be somewhere in the record.

Q. Did you not have something to do with that?

A. Not that I recall. The Hartford payments were apparently made to Lynch direct. I don't recall that any [fol. 3636] of them were made through Owens.

Q. I did not say any of them were made through Owens; I said did you not have something to do with making the arrangements by which Hartford made $125,000 for these feeder devices from Lynch?

A. I might have; I don't recall.

Q. Where did the $125,000 come from; Lynch and Miller? The record shows 125 from Owens, 125 from Hartford: where did the other $200,000 come from, if you know?

A. I don't know. The only thing I had is what appeared in that prospectus.

Q. Do you not know a company called either the Owens-Illinois Glass Consolidated Company, or a company of which Mr. Levis was president, paid $200,000, and acquired the stock from the Lynch Corporation? You know that, do you not, sir?

A. I know they bought some Lynch stock; but I had nothing whatever to do with the transaction. I have no way of recalling it.

Q. You were not told about it at all?

A. I knew about it at the time. You are asking for my present memory.

Q. You knew at the time?

A. I might have.

Q. You knew the amount at the time, too, did you not?

A. I don't know how that particular deal was financed. I don't know that I knew. I may have.

[fol. 3637] Q. The president of that company was Mr. William Levis, also the president of your company?

A. Yes, sir.

Q. His uncle, called colloquially—and I mean no disrespect—"Uncle Harry", R. H. Levis, was also a director of your company; and R. H. Levis was the active head of this corporation?

A. I never was an officer, and never attended any meetings or knew anything about the affairs of the Illinois Glass Company.

Q. See if I can refresh your recollection. I show you a memorandum dated August 14, 1933, which counsel for Hartford have stipulated, unless I am mistaken, prepared by Mr. Arthur T. Safford; and see if that does not refresh your recollection as to your participation in where all this money was coming from?

Mr. Wall: What exhibit?

Mr. Isseks: Government's Exhibit No. 326.

A. It refreshes my recollection about the fact that we were to pay $125,000 for the Lynch suction inventions; and that Hartford was going to pay some sum for the feeder rights. As to the statement at the end: "Lynch will have to raise $200,000;" it does not refresh my memory as to where that $200,000 was raised.

Q. Do you not remember a conference with Mr. Safford in New York at the Biltmore Hotel, on or about August 10, 1933, as regards rights passing with regard to the Lynch [fol. 3638] deal, as stated by Mr. Safford in the memorandum?

A. I would not remember a conference on that specific date. As I testified, I had some conference with Mr. Smith, and I may have had this conference with Mr. Safford.

Q. You do not dispute what he state in the memordanum that you said?

A. I cannot dispute it; but I don't know.

Q. But it generally sets forth, as you said before, what the deal was, namely, Owens was to pay $125,000 for, I think you said, the suction inventions?

A. Yes, sir.

Q. And Hartford was to put up approximately the same amount for the feeder inventions?

A. Yes, sir.

Q. Of both Lynch and Miller in each case?

A. Yes, sir.

Q. You testified, I believe, the other $200,000 was to come from some other source?

A. I would not know what source that was to come from. I knew at the time of the deal that it came from somebody, and I should say it was the Illinois Corporation; but I had no connection with it.

Mr. Isseks: Your Honor, at this time I should like to offer as the next government exhibit, a letter, stipulated as to genuineness by Owens, at page 23, addressed to Mr. Belknap, dated August 2, 1933, signed by S. F. Parham.

[fol. 3639] The Clerk: Government's Exhibit No. 742.

Mr. Isseks: I offer it in evidence, Your Honor.

The Court: It may be admitted.

Thereupon, Government's Exhibit No. 742 was read to the Court by Mr. Kramer, of counsel for the government.

Mr. Isseks: Your Honor, at this time I offer in evidence as Government's Exhibit No. 743 a memorandum dated August 21, 1933, addressed to Mr. H. G. Phillips; a carbon copy to Mr. B. F. Hazelton, Jr., and Mr. C. B. Belknap; signed William E. Levis; stipulated as to genuineness by Owens-Illinois, at page 23 of the Stipulation.

The Court: It may be admitted.

Thereupon, Government's Exhibit No. 743 was read to the Court by Mr. Apsey, of counsel for the government.

Q. Mr. Belknap, were you present at the closing in connection with the Lynch and Miller matters, which took place I believe either in New York or Hartford, on August 23, 1933?

A. I don't recall, Mr. Isseks, being present. I do know that I drafted the contract which related to the suction rights which came to this Company; but I have not any specific recollection as to whether I was or was not present at the actual delivery of the papers.

[fol. 3640] Q. Do you remember in 1933 Hartford exercised an option in connection with the Headley & Thompson applications and paid $200,000?

A. Yes, sir.
Q. And your company paid one-half?
A. They did.

Mr. Isseks: Your Honor, at this time I offer as Government's Exhibit No. 744 a memorandum dated September 22, 1933, signed by Mr. Levis; carbon copies to Mr. B. F. Haselton, Jr., and Mr. C. B. Belknap; stipulated as to genuineness by Owens-Illinois, at page 33.

Q. In this connection, Mr. Belknap, I ask you whether you recognize the handwriting in the left hand corner there? It says "File" and somebody's initials?

A. No, those are not my initials. Probably they are my stenographer's initials.

Q. It looks like "File—C. B. B.", but I am not clear. Does it look that way to you?

A. Yes; but it is not my initials.

Mr. Isseks: There is an arrow on this copy, indicating this copy went to Mr. C. B. Belknap. The witness says it is not his handwriting, but says it is his secretary's.

The Court: It may be admitted.

Mr. Isseks: I should like to have it read.

[fol. 3641] Thereupon, Government's Exhibit No. 744 was read to the Court by Mr. Kramer, of counsel for the government.

Mr. Isseks: Your Honor, at this time I offer as Government's Exhibit No. 745, an intra-company memorandum, dated October 9, 1933; addressed to Mr. William E. Levis, president and general manager; it is re "Forming Machine Situation". It is signed "Patent & License Department, C. B. Belknap, Vice-President". It is stipulated as to genuineness by Owens-Illinois at page 23 of the Stipulation. I offer it in evidence.

The Court: It may be admitted.

Thereupon, Government's Exhibit No. 745 was read to the Court by Mr. Apsey, of counsel for the government.

Q. You wrote that, did you not?
A. I did.
Q. I direct your attention to the last paragraph, the second sentence, particularly:

"Such an arrangement not only removes the possibility of complicating litigation relating to forming machines,

but it brings together into one hand the licensing of feeder and forming machines."

What person, corporation, or other entity, did you refer to by "into one hand"?

A. I referred to the Hartford-Empire Company.

[fol. 3642] Mr. Isseks: Your Honor, at this time I offer as Government's Exhibit No. 746, a memorandum dated October 9, 1933. It has the same date as No. 745, but it has a different heading. It is adddressed to Mr. Levis, President and General Manager. The heading is: "Suction Machine Foreign Rights". It is signed also: "Patent & License Department, C. B. Belknap, Vice-president".

The Court: Dated October 9?

Mr. Isseks: The same date as the previous one, Your Honor. The only difference is the heading. No. 745 is headed: "Forming Machine Situation". This one is headed: "Suction Machine Foreign Rights".

Mr. Wall: The same parties?

Mr. Isseks: The same parties, yes. It is stipulated as to genuineness at page 23 of the Owens-Illinois Stipulation.

The Court: It may be admitted.

Thereupon Government's Exhibit No. 746 was read to the Court by Mr. Kramer, of counsel for the government.

Q. Mr. Belknap, did you write that memorandum?

A. I wrote that memorandum, yes. That refers to a possible purchase of machines, which we did not consummate.

Mr. Isseks: Your Honor, at this time I offer as Govern-[fol. 3643] ment's Exhibit No. 747 a photostat of an original letter, dated October 20, 1933; addressed to Mr. C. B. Belknap; signed: "Hartford-Empire Company, S. F. Parham"; stipulated as to genuineness by Owens-Illinois, at page 23.

Q. I ask the witness whether the writing in the upper left hand corner is his own handwriting?

A. It is.

Q. I ask you whether the handwriting on the next page is your handwriting?

A. It is.

Q. Can you read it? I cannot.

A. I cannot either,—"Rowe is to concede priority to Kadow to take back license".

Mr. Isseks: I offer it in evidence, Your Honor.
The Court: It may be admitted.

Thereupon, Government's Exhibit No. 747 was read to the Court by Mr. Apsey, of counsel for the government.

(Morning recess.)

The Court: Preceed.
Mr. Isseks: Your Honor, at this time I should like to offer the witness' reply to Government's Exhibit 747. This document is dated October 23, 1933. It is offered as Government's Exhibit No. 748. It is addressed to Mr. Parham, signed by the witness, as vice-president; stipulated as to [fol. 3644] genuineness by Owens-Illinois, page 23 of the Stipulation.
The Court: It may be admitted.

Thereupon, Government's Exhibit No. 748 was read to the Court by Mr. Kramer, of counsel for the government.

Q. Mr. Belknap, did you write that letter, sir?
A. I did.

Mr. Isseks: Your Honor, at this time I offer Government's Exhibit 749, a letter dated June 11, 1936, addressed to the witness; signed: "Lynch Corporation, T. C. Werbe, president". It is stipulated as to genuineness by the Lynch Corporation at page 22 of the Stipulation. I offer it in evidence, Your Honor.
The Court: It may be admitted.

Thereupon, Government's Exhibit No. 749 was read to the Court by Mr. Apsey, of counsel for the government.

Mr. Isseks: Your Honor, at this time I offer in evidence as Government's Exhibit No. 750, a letter dated June 17th, 1936; addressed to the Lynch Corporation, attention of Mr. Werbe, signed: "C. M. Miller"; stipulated as to genuineness by the Lynch Corporation, at page 22 of the Stipulation.
Mr. Devin: Your Honor, may we interpose an objection on the ground that it is a privileged communciation?
The Court: It may be admitted.

Thereupon, Government's Exhibit No. 748 was read to the Court by Mr. Kramer, of counsel for the government.

Q. Mr. Belknap, did you write that letter, sir?
A. I did.

Mr. Isseks: Your Honor, at this time I offer Government's Exhibit 749, a letter dated June 11, 1936, addressed to the witness; signed: "Lynch Corporation, T. C. Werbe, president". It is stipulated as to genuineness by the Lynch Corporation at page 22 of the Stipulation. I offer it in evidence, Your Honor.

The Court: It may be admitted.

Thereupon, Government's Exhibit No. 749 was read to the Court by Mr. Apsey, of counsel for the government.

Mr. Isseks: Your Honor, at this time I offer in evidence as Government's Exhibit No. 750, a letter dated June 17th, 1936; addressed to the Lynch Corporation, attention to Mr. Werbe, signed: "C. M. Miller"; stipulated as to genuineness by the Lynch Corporation, at page 22 of the Stipulation.

Mr. Devin: Your Honor, may we interpose an objection on the ground that it is a privileged communication?

[fol. 3645] Mr. Isseks: I submit that the contents of the document show it is merely a statement of facts.

Mr. Devin: I have not seen it.

Mr. Isseks: There is no opinion, I submit.

The Court: I am overruling the objection.

Thereupon, Government's Exhibit No. 750 was read to the Court by Mr. Kramer, of counsel for the government.

Mr. Isseks: Your Honor, at this time I offer as Government's Exhibit No. 751 a letter dated October 21, 1937, addressed to Mr. R. Graham Bailey; signed: "Owens-Illinois Glass Company, Henry W. Carter, counsel, Legal & Patent Department"; carbon copies to the Lynch Corporation, of Anderson, Indiana; and to Mr. C. B. Belknap. The copy we offer has been stipulated by Lynch as coming from its files, at page 22 of the Stipulation.

Before Your Honor rules, I want to ask one question.

Q. Mr. Belknap, who is Mr. R. Graham Bailey, if you know?

A. He is an Englishman who is interested in various glass companies in England.

Q. Connected with the British Hartford-Fairmont, too, is he not?

A. Yes, he is connected with them, and with other companies.

Mr. Isseks: I offer it in evidence.

Mr. Middleton: Was it stated, Your Honor, that this particular document was stipulated as genuine?

Mr. Isseks: By the Lynch Corporation, as coming from [fol. 3646] its files. You will note in the lower left hand corner: "Carbon copy to Lynch Corporation".

Mr. Middleton: It is not covered by our Stipulation.

Mr. Isseks: No, it is not.

The Court: You offer the document?

Mr. Isseks: Yes, Your Honor.

The Court: It may be admitted.

Thereupon, Government's Exhibit No. 751 was read to the Court by Mr. Kramer, of counsel for the government.

Mr. Isseks: Your Honor, at this time I offer as Government's Exhibit No. 752 a letter dated October 22, 1937; addressed to the Owens-Illinois Glass Company; signed by the Lynch Corporation, T. C. Werbe, President; stipulated as to the genuineness by Lynch at page 27 of the Stipulation.

The Court: It may be admitted.

Thereupon, Government's Exhibit No. 752 was read to the Court by Mr. Apsey, of counsel for the government.

Mr. Isseks: Your Honor, at this time I offer as Government's Exhibit No. 753, a letter dated December 15, 1937; addressed to Mr. Werbe by the witness.

At the same time, Your Honor, I should like to offer the reply as Government's Exhibit No. 754, dated December 17, 1937; addressed to the witness by Mr. Werbe.

Both documents have been stipulated as to genuineness by the Lynch Corporation at page 28 of the Stipulation.

The Court: They may be admitted.

[fol. 3647] Thereupon, Government's Exhibit No. 753 was read to the Court by Mr. Apsey, of counsel for the government.

Thereupon, Government's Exhibit No. 754 was read to the Court by Mr. Apsey, of counsel for the government.

Q. Mr. Belknap, did you write Government's Exhibit No. 753?

A. I did.

Q. You received the reply, Government's Exhibit No. 754?

A. I assume I did.

Q. What was the subject matter of the correspondence which is Government's Exhibit No. 753 and 754, sir?

A. Apparently, either on the Pacific coast or in the East, we were making some changes to the Lynch machine which they felt might bring the machine in infringement with somebody else's patents. They had sold us the machines. As I understood the law, we were not afraid to use them as they were sold to us; but if we changed them, so that they infringed somebody else's patents, then we became ourselves liable for the infringing machine. I think that was the subject matter of our discussion.

Q. You notice the letter you write says: "A possible infringement of your patents by alterations and modifications on the Lynch machine".

A. Yes, sir.

Q. Were they questioning that you might be infringing their patents?

A. Yes. They sold us one type of machine. We might take that machine and turn it into a later type—the same as [fol. 3648] if I had a Model 1920 automobile and rebuilt that to include the later inventions of somebody. Maybe they were putting out a different machine. They did not give me the right to do that when they sold me the machine.

Q. You say in your letter, Government's Exhibit No. 753: "I would be glad to discuss this situation with you and also several others that have arisen". Do you presently recall what these other situations were?

Mr. Middleton: I just want to inquire whether the original of Government's Exhibit No. 752 shows the notation that this was a form letter sent to the trade: "All users of Lynch machines"; that is the indication on the file copy with Lynch.

Mr. Isseks: It is all right with me. I do not know. I will take that as a statement of fact.

Q. Do you know that, Mr. Belknap?

A. I assumed it was a form letter sent out.

Q. You say here: "I would be glad to discuss this situation with you, and also several others that have arisen". Do you recall what the other situations were, sir?

A. The only other situation I recall was a revision of our suction contract with Lynch. We had taken an exclusive right, and we were willing to simply have that made non-exclusive. And I think there was also some question, our having withdrawn from the Hartford contract, whether we should not revise the contract we had with Lynch so as to cut out reference to that contingency.

Q. Did you revise the contract with Lynch?

[fol. 3649] A. We revised the suction right to make it non-exclusive.

Q. When was that?

A. At some subsequent date, subsequent to the date of the letter.

Mr. Fess: Your Honor, before we leave that subject, may we clear up this Government's Exhibit No. 752? In the copies which were handed out to counsel the notation in pencil did not appear on the bottom of Government's Exhibit No. 752: "Form letter sent to the trade".

Mr. Isseks: Mr. Middleton just raised that point. I have no question about it. If counsel says so, it is all right with me.

[fol. 3650] Mr. Isseks: Your Honor, at this time I should like to offer the next government's Exhibit 755, a telegram dated November 3, 1933, addressed to W. E. Levis, Hotel Biltmore, Los Angeles, California, and signed by the witness, stipulated as to genuineness by Owens-Illinois at page 24 of the Stipulation.

* * * * * * *

[fol. 3651] Q. Mr. Belknap, I show you that telegram, Government's Exhibit 755, and I ask you first who Preston is, referred to by you in the telegram?

A. That is Preston Levis, who was then either the president or general manager of our coastal area.

Q. He is now president of the——

A. Owens-Illinois Glass Company.

Q. Since January, 1941?

A. Yes.

Q. So there won't be any confusion, he is a first cousin of W. E. Levis?

A. I think so.

Q. Not a brother?

A. Cousin.

Q. What was the McLaughlin situation referred to by you in the telegram?

A. Someone from our Coast Company had made a complaint that a McLaughlin Glass Company were using a feeder on which they were not paying royalty, and that our [fol. 3652] plant on the coast was completely equipped with Hartford equipment paying royalty. It was just the usual kick that any licensee gives when he finds an infringer that is not paying—not licensed.

Q. At that time you were still a participant in the divisible income, were you not, sir?

A. Yes.

Q. You were interested from that angle, too, anyone that was manufacturing glassware on automatic equipment ought to pay into the fund that you were getting one-third of and Hartford one-third——

A. It was an infringement of the patent.

Mr. Isseks: At this time I offer as Government's Exhibit No. 756 Owens-Illinois Pacific Coast Company intra-company correspondence dated November 23, 1934, addressed to the witness, with carbon copy to Mr. J. P. Levis, and signed H. S. Wade, stipulated as to genuineness by Owens-Illinois at page 24.

Q. Mr. J. P. Levis is the same gentleman—Preston Levis?

A. Yes.

Mr. Isseks: Thank you. I offer it in evidence.

The Court: It may be admitted.

Thereupon, Government's Exhibit No. 756 was read to the Court by Mr. Kramer, of counsel for the government.

Mr. Isseks: At this time we offer Government's Exhibit 757, memorandum dated December 5, 1930, written to Mr. Wade, carbon copy to Mr. J. P. Levis, signed by the witness, stipulated as genuine by Owens-Illinois at page 24 [fol. 3653] of the Stipulation.

The Court: It may be admitted.

Thereupon, Government's Exhibit No. 757 was read to the Court by Mr. Apsey, of counsel for the government.

Q. Did you write that, sir?

A. I did.

Q. Did you know what Hartford did about it thereafter, if anything?

A. I don't know whether they sued or licensed McLaughlin.

Q. You don't know about it?

A. No, I don't recall it.

Q. Are they still in competition out there with you, if you know?

A. I don't think they are.

Mr. Isseks: At this time I offer Government's Exhibit 758, memorandum Owens-Illinois Pacific Coast Company intra-correspondence, addressed to the witness, signed by one John W. Foringer. It is not stipulated for some reason, Your Honor, dated April 12, 1937.

Q. I will ask the witness whether he remembers the subject matter of the memorandum. There is a certificate on the original which we have, which says it was certified as a true copy of the original of the records of this company, signed E. F. Martin, assistant secretary and assistant treasurer, Owens-Illinois Glass Company. Mr. Belknap, do you remember the subject matter of the memorandum?

A. No, apparently it related to some design patent which we were not interested in.

[fol. 3654] Mr. Isseks: Mr. Middleton, any question about the authenticity of the document?

Mr. Middleton: I think not. I object to the document, though, Your Honor, and would ask that counsel state his notions as to what would make it relevant in this case.

Mr. Isseks: The sentence at the end of this first paragraph, "I am not so much interested in the purchase of his design patent as I am in the information contained in the second paragraph regarding a brewing combine intending to manufacture glass bottles". I am interested in what the interest Owen had in the fact somebody intends to go into the manufacture of glass bottles.

Q. Who is Mr. Foringer?

A. Mr. Foringer was a young attorney who went out to the Coast Company after taking a training course, and was out there as an assistant in the office just generally.

Q. He was trained first by your staff and then sent out there?

A. No, he went through the usual training course on machines and methods of manufacture.

Q. Is it a fair statement to say one of the inside counsel of the wholly owned subsidiary, Owens-Illinois Pacific?

A. I think he was acting more as assistant than counsel.

Q. That is what I meant, assistant inside counsel?

A. I think that is fair.

[fol. 3655] Mr. Isseks: I offer it in evidence.

The Court: I think I will admit it. Objection overruled.

Mr. Isseks: There is no sense in reading it again. I read the important part.

The Court: All right.

Mr. Isseks: At this time I offer the next Government's Exhibit, a letter dated November 2, 1934, addressed to the witness, signed R. D. Brown, stipulated as to genuineness by Owens-Illinois at page 24 of the Stipulation. That is Government's Exhibit 759.

I offer the reply as Government's Exhibit 760 to Mr. Brown by the witness, dated November 7, 1934. The reply has been stipulated as genuine by Owens-Illinois.

The Court: 759 and 760 may be admitted.

(Exhibit No. 759 is read by Mr. Kramer.)

(Exhibit No. 760 is read by Mr. Apsey.)

Q. You wrote Government's Exhibit 760, did you not, the last letter that was read, in reply to Government's Exhibit No. 759?

A. Yes.

Q. Now, Mr. Belknap, do you remember the time came in 1935 when there were discussions between your company and the Hartford-Empire Company with regard to the revision of the contracts of the various companies?

A. I do.

Q. Did you participate in the negotiations?

A. I did.

[fol. 3656] Q. Who did you have your conference with, if anyone?

A. Various of the Hartford people, Mr. Smith among them.

Q. Anybody else, sir?

A. Well, I imagine their lawyers, Mr. Safford and Colonel Brown and maybe Mr. Parham. I would not recall.

Q. The only person you remember is Mr. F. Goodwin Smith?

A. No. I think I recall discussing that revision with Mr. Safford also.

Q. Anybody else, sir?

A. Possibly Mr. Amory Houghton.

Q. Anybody else?

A. I don't recall whether Mr. Falck was there.

Q. Anybody else, sir?

A. Not that I recall.

Q. To your best recollection?

A. Yes.

Q. Who participated on behalf of the Owens-Illinois Glass Company?

A. I pretty much carried that negotiation myself with some help from Mr. Levis.

Q. Anybody else, sir? Any counsel besides yourself?

A. Mr. Lloyd Williams.

Q. Anybody else?

A. That is all I recall.

Q. What precipitated the negotiations?

A. The negotiation was precipitated by various talks that Mr. Levis and I had almost from the time I became a vice-president of the company in '33. Mr. Levis approached it [fol. 3657] from the manufacturing standpoint and I approached it from the patent standpoint, and his theory was we ought to be in the manufacturing business exclusively and out of the licensing business, and he wanted me to become active in the other problems which involved the training and personnel of all the general matters of running the business, and some time in 1934, or the early part of '35, he had convinced me that his theory of the thing was right, and I sent out to get a revision of our contract with Hartford so that we take a stated sum of money for our—in lieu of our participation and for the patents that we gave them rights to license others under, and ceased to have any participation in their income from '35.

Q. Anything else?

A. I think that generally covers it.

Q. Don't you remember, or isn't it a fact that in the early part of 1935 Capstan took the position that they were going to bring suit unless it was advised of the terms of

the license from Hartford to Owens, and from Hartford to Hazel?

A. I don't recall ever having such knowledge.

Q. Don't you remember the fact that Capstan took the position that they had a favored nation clause under this original contract which would, as it was interpreted, give title to similar machines, and therefore claim that they refused to pay royalties or would sue for royalties that had been paid theretofore by Hartford to Owens, and to Hazel-Atlas?

[fol. 3658] A. No, I don't recall having any recollection of Capstan having anything to do with our decision.

Q. I hand you a memorandum which is Government's Exhibit 567, which purports to be a conference which Mr. Lloyd T. Williams had in New York City with Mr. Goodwin Smith, Mr. Brown, and W. J. Belknap, and direct your attention to the memorandum and see if that does not refresh your recollection that Capstan was taking that position in the early part of 1937?

A. What is the question?

(Question read.)

Q. I meant 1935. I am sorry I misspoke myself.

A. It refreshes my recollection to the extent I recall there was a conversation with Capstan, but this memorandum apparently relates to some form of license with Capstan, but it does not refresh my recollection as having anything to do with our 1935 agreement.

Q. You say you do remember some controversy?

A. I remember Hartford had some controversy with Capstan.

Q. You remember that matter was brought to your attention by Hartford in some way?

A. I think Mr. Williams probably told me of that conference.

Q. Don't you remember that was suggested initially by Mr. Smith, the situation would be as Mr. Williams said in the memorandum, would be a yearly arrangement of some kind with a separate license agreement?

[fol. 3659] A. No, because at that time we were not interested in yearly arrangement.

Q. You don't dispute Mr. Williams reported to you the substance of the memorandum?

A. I can't affirm that nor deny it.

Q. To the extent you testified you do affirm it?

A. Yes.

Q. In connection with the '35 revision, how was that sum of two and one-half million dollars arrived at which Hartford paid over to Owens,—I believe that is the amount, isn't it?

A. Yes. I would say it was arrived at by ordinary business trading.

Q. By bargaining?

A. Yes. We attempted to get as much as we could for our inventions, and Hartford attempted to pay as little as they could.

Q. The contract had a number of years to run, it ran to 1945, didn't it?

A. Yes. It had approximately ten years to run, and our treasury department were very much opposed to our making this contract.

Q. They thought you should get more?

A. They thought we should get more. Do you want me to explain?

Q. Sure. I am very anxious. I don't want to stop you at all. Any time you want to make a statement you just tell us and we would like to have it, as much as you want to [fol. 3660] give to us.

A. Our treasury department took the position that this contract had ten years or more to run, and we were entitled to a larger sum of money. Mr. Levis and myself took the position it was not a question of what the money was under the contract, it was a question of what we could get today and use the time for our top executives solely in business, and we finally prevailed, although I don't think we ever sold our treasurer, Mr. Phillips, on the justice of the sum of money which we did accept.

Q. Some of the people in your company wanted to get more money?

A. Yes. Someone wanted to get what the contract could figure out for over a period of time.

Q. Is it fair to say the amount you received was calculated on the basis of predicting what you would receive over that period of ten years, and then discounting on the basis of various considerations?

A. I certainly would say not.

Q. Was it a rough figure taken out of the air?

A. We tried to get three and one-half million, or three million. I think at one time we agreed on $3,000,000, and then in view of certain non-exclusive suction rights we cut that amount from $3,000,000 to two and one-half million.

Q. In arriving at the actual figure that was based on what you might get over that ten year period, less deductions for cash immediately and less deductions for any [fol. 3661] other consideration that might be normally taken into account?

A. No. I think it was based more on what we felt we could get Hartford to pay and what they could afford to pay.

Q. Did they pay on a basis of what you asked, or on a basis of negotiation?

A. On a basis of negotiation.

Q. Do you consider you were paid that amount of money in lieu of the money you would have received over the ten year period?

A. Certainly not.

Q. Was it any part of the ten year period?

Mr. Middleton: I object to the question. I don't understand it myself.

Mr. Isseks: The witness understands.

(Question read.)

Mr. Isseks: I will reframe my question.

Q. What is your understanding why Hartford gave you two and one-half million dollars?

A. Well, they figured it was a good deal for them, and we figured on the basis of what we wanted to do it was a good deal for us.

Q. But why would they give you two and one-half million dollars; in lieu of what?

A. In lieu of the participation we might get, plus a license under the patents which we gave them, with a right to sub-license others without any payment to us.

Q. In view of your participation in the divisible income [fol. 3662] over a ten year period?

Mr. Middleton: I object.

A. I told you the two considerations. One was just as important as the other.

Q. Did you give them any new rights in 1935 that they did not have in 1932?

A. Yes. We gave them the right to use our invention without any payment to us and without any participation. I would say that was new rights.

Q. But they had rights to use the patents in the 1932 contract, didn't they?

A. Yes, by paying us a certain percentage.

Q. So there was nothing new which you gave them in '35 that they didn't have in '32 in the way of rights under patents?

A. As far as rights under patents, I don't recall if we extended that time,—I can't tell without looking at the contracts.

Q. But the two and one-half million dollars was the figure determined in lieu of participation and in lieu of existing rights that they already had?

A. If I am correct, that the periods of time for those two contracts on our inventions flow to them without payment to us, it is correct.

Q. You said there was a $500,000 deduction towards the end because of certain suction rights you got?

A. Yes.

Q. Were those new rights?

[fol. 3663] A. Yes, those were new rights. Prior we had an option to purchase suction rights from Hartford I believe on exclusive basis, and we wiped out that option and simply took a non-exclusive royalty-free license.

Q. On Hartford's suction machine patents?

A. On any invention of Hartford which related to suction machine. I might say in that connection, it is awful difficult to draw a distinction as to when a patent is completely a suction patent and when it is a feeder patent, because in many cases the movements of mechanisms are applicable to both types of machine and overlap, as in connection with that O'Neill correspondence regarding patents from O'Neill. Some were called suction patents, but actually one overlapped the other.

Q. You made your arrangement with Hartford on feeders non-exclusive too?

A. Yes.

Q. So in 1935 you could issue a license to anybody in connection with feeders?

A. We could under our patents but not without infringing Hartford patents.

* * * * * * *

[fol. 3664] Q. Did you ever issue a license in connection with your feeder patents, not feeder device, feeder patents?

A. No, I don't know of anyone that would take one.

The Court: You may suspend at that point. The bailiff will recess court until two o'clock this afternoon.

(Noon recess.)

[fol. 3665] (At 2 o'clock p.m. Tuesday, April 15, 1941, the trial was resumed.)

Mr. Isseks: I understand the witness would like to make an explanation of his last answer just before we suspended.

The Court: What was the question?

The Witness: (Reading from paper.) "Did you ever issue a license in connection with your feeder patent,—not feeder device,—feeder patent? No, I don't know of anyone that would take one."

I would like to explain my reason for that statement was this: That a patent license doesn't give a person a right to build a machine. It is in reality nothing more than a covenant by the owner not to sue, and in this particular period, Hartford had patents which were in existence, and subsequently came out with other patents which covered the feeder devices, and obviously no one would take a license from us and pay us a royalty for it if they also had to get a license from somebody else who had patents. The best illustration of that is to go back to the subject-matter of what we were settling when I wrote that original memorandum in July, 1923, to Mr. Carter,—I think it is Exhibit 716. At that time we had been conducting these interferences and suits were pending for a period of years, and I had reached the conclusion that Hartford's inventor, Mr. Peiler, had made a great invention in the feeding of glass of a viscosity such that a whole charge could be formed in the air and cut off to the size and shape to go into the mold, [fol. 3666] and that Owens had issued patents covering mechanism, namely the Lott Patent, and it was essential, if anybody was going to operate that form of feeding, to use those mechanisms. So far as I know up to the expira-

tion of those patents in 1938, they covered all of the mechanisms which were in commercial use. At the period as to which I was inquired about as to the granting of licenses, I do not know of anyone who would have paid us for that privilege, since they could get that privilege, plus something else, from the Hartford license. When we made that settlement, my client, on my recommendation, gave up the right which it had to put Hartford out of business, if it was successful in that litigation, and took in lieu of that a certain percentage of the royalties which were paid out. The various other interferences were settled, and we then went on to settle the other parts of the interferences in which Tucker, Reeves & Beatty, Miller, and others, were involved. But when we speak of a Tucker & Reeves, or Miller, or O'Neill, or some of these other feeders, we are really talking about the same basic invention which became known as "gob feeding", which was the subject-matter over which this controversy really raged, and it wasn't a question of going out and purchasing a lot of independent machines, but of simple modifications of the same machine which we settled in the original settlement with Hartford, and which were simply auxiliary to that particular subject-matter. So that we are talking about the invention which Hartford made of the method, and the invention which Owens had [fol. 3667] of the machine, which was necessary to carry out that invention. It seems to me that is an explanation of what I meant when I said in the last answer that I didn't know who would take a license from us.

Q. Did anybody ever apply for a license from Owens on gob feed?

A. I don't recall that they did.

Q. Now, before you made your 1935 contract, Owens gave Hartford an exclusive license on their gob feed patent?

A. That is my recollection.

Q. Why did you change from an exclusive to a non-exclusive license, in view of your long explanation that nobody else would want a license?

A. Well, we were not participating in any part of the royalty, and if we wanted to license somebody on our machine after the Hartford patents expired, we would be in position to do so.

Q. But you made it non-exclusive before they expired, as of October 1, 1935?

A. Yes, we made all contracts non-exclusive.

Q. Wasn't the reason for that so as to be free to be in position to sub-license under your patents?

A. We wanted to be free as and if the Hartford patent, or anybody else's patent, expired, we would be permitted to grant a license.

Q. I am talking about the July, 1932, contract. In other words, in 1932, as early as that, when you were still par- [fol. 3668] ticipating for three years, you made it non-exclusive from Owens to Hartford. So that you could, in that period from July 1, 1932, to October 1, 1935, have theoretically sublicensed under your patent?

A. If that is what the contract says, that would be true, we theoretically could; practically we could not.

Q. Now, of course, your company originally had the suction patents?

A. Yes.

Q. When did they expire, the basic patents?

A. I think the LaFrance diphead patent was the last broad patent, and I think that expired sometime in the '20's—1923 or '28,—I cannot recall.

Q. Then in 1932 you got an option in connection with certain suction patents Hartford had?

A. Yes.

Q. And in 1935 you took a non-exclusive license on their suction patents?

A. Yes.

Q. Have you ever sublicensed anybody since you have been with the company, in connection with your suction patents, whatever they are?

A. Not that I recall.

Q. As far as you know, Hartford hasn't sublicensed in connection with its suction patents?

A. No, not that I know of; I didn't know.

Q. I want to go back to 1935, in connection with the Tucker, Reeves & Beatty deal, which you mentioned in your [fol. 3669] long explanation. Your company acquired from Tucker, Reeves & Beatty an exclusive, assignable and divisible license, did it not?

A. I don't believe it was exclusive.

Q. Non-exclusive, assignable and divisible?

A. Non-exclusive, assignable and divisible.

Q. That is Government's Exhibit 90. Then you also, in order to make sure Hartford would not interfere with you,

you obtained from Hartford, under date of February 11, 1926, an agreement extending your rights to make, have and use, and sublicense, under the Tucker, Reeves & Beatty patents, to the extent that the Hartford patents made any claim which was in interference with Tucker, Reeves & Beatty; you did that, did you not?

A. Yes, we made that arrangement, only so far as the claims which I believe were in interference, or could have been made by Tucker, Reeves & Beatty if they were properly made.

Q. On February 11, 1926——

A. But that, of course, gives no rights under any other claims.

Q. I understand, but Tucker, Reeves & Beatty, and most of the Peiler patents, were in interference, weren't they: that was the whole fight in 1925?

A. Well, the fight had gotten into the second stage, if I might explain it. Tucker, Reeves & Beatty's original device attempted the control of the gob of glass by a burner placed below and around the glass intermediate the time of feeding to the mold. But Tucker, Reeves & Beatty had come in and [fol. 3670] filed some applications in connection with the control of the glass, using the plunger. And my feeling at the time of making the statement was that they weren't entitled to those, and that while you could use, possibly, the original Tucker, Reeves & Beatty so-called cup feeder, that even with this auxiliary agreement from Hartford, we would not be able to use their then familiar form of using a plunger in combination with the cup.

Q. Don't you remember the matter came up in 1938 when your company was anxious to get into the business of manufacturing insulators in connection with feeder devices? And by "insulators" I mean insulators made of heat-resisting ware.

A. Yes, we had been making, at Muncie, insulators, over a period of time. At one time they were made on, I believe, the original Tucker & Reeves cup feeder without the plunger. We attempted to revive that within the past two or three years, but it was so obsolete we would prefer to have gotten a license and paid the royalty on the use of the plunger in connection with it than to use the device without it.

Q. Do you remember in 1938 your company wanted to manufacture insulators made of heat-resisting ware and

asked Hartford for a license to use its feeders in that connection?

A. We did, and we were turned down.

Q. Do you remember at that time you took the position you might take your Tucker, Reeves & Beatty contract of [fol. 3671] 1925, as modified and amended by the February, 1926, contract, and could use them to devise a machine under that license which you had from Tucker, Reeves & Beatty and Hartford, and make an insulator and heat-resisting ware on a Tucker, Reeves & Beatty feeder?

A. We took the position that we could. I think that was a good deal of trading talk, but, actually, we haven't been able to do it commercially.

Q. But you took that position?

A. Well, certainly we did.

Q. So you thought you did have some rights which you could assign and sublicense under the Tucker, Reeves & Beatty patents as modified by the amendment given to you by Hartford in February, 1926?

A. Did you say by Hartford?

Q. No, Tucker, Reeves and Beatty.

A. Yes, we took our license from Tucker, Reeves & Beatty direct, and we still have that license, and as far as I know we could grant licenses to anybody who wanted to use that particular feeder, insofar as it did not conflict with Hartford patents.

Q. Insofar as they have rights under the February 11, 1926, contract, whatever it is?

A. I am trying to think of the year, whether '26 or '25.

Q. Well, I have a memorandum which I will show you in a few minutes, and it shows February 11, 1926. Perhaps counsel for Hartford would check up on it.

Mr. Wall: I do not have it at the moment.

[fol. 3672] Q. Whatever the date of the contract, Hartford agreed, insofar as there was interference between Tucker, Reeves & Beatty and Hartford patents, you could use the Tucker, Reeves & Beatty feeder for that purpose?

A. Yes, but that contract and all others were cancelled in 1935.

Q. Including the amendment to your Tucker, Reeves & Beatty rights?

A. Yes, that is my recollection of it.

Q. In other words, any rights that Hartford gave you in connection with Tucker, Reeves & Beatty went by the board on your October 1, 1935, contract?

A. Yes.

Q. But up to 1935 you could have sublicensed, could you not, under the Tucker, Reeves & Beatty patents, plus whatever you had from Hartford?

A. Yes, but that wasn't enough.

Q. But today, you said, you could have licensed under the Tucker, Reeves & Beatty patent, because you still have those rights under Government's Exhibit 90?

A. Yes.

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[fol. 3673] Q. Now, under the Tucker, Reeves & Beatty contract of 1925, you still have the right to assign and sublicense whatever right you have?

A. Yes, but for the same reason I explained in connection with my answer right after we convened this afternoon, I don't know who would take a license for that.

Q. Have you offered anybody that?

A. No; nobody has asked for it as far as I know.

Q. Do I understand that on October 1, 1935, this amendment of February 11, 1926, was cancelled?

A. That is my offhand recollection of it.

Mr. Middleton: To be perfectly clear on it, Mr. Isseks, it would be September 30, 1935, that was the contract which cancelled all previous contracts.

Mr. Isseks: I will take the modification.

Q. So that in February, 1938, the only right which your company had under the Tucker, Reeves & Beatty agreement, which was Exhibit 90, were limited to what Tucker, Reeves & Beatty gave you, and not what Hartford gave you?

[fol. 3674] A. That is my recollection, without having the contract before me.

Q. I show you Government's Exhibit 376, dated February 7, 1938, which is a letter from F. Goodwin Smith to Amory Houghton, and I direct your attention to the last two paragraphs:

"The foregoing statement seems true but there is quite a nigger in the woodpile due to the fact that in 1925 when

Tucker, Reeves & Beatty rights were purchased, Owens retained for themselves a non-exclusive license under Tucker, Reeves & Beatty patents. Thus, if Owens, under the Tucker, Reeves & Beatty patents, could develop a feeder which did not infringe any of Hartford's other patents, they can do what they please with them. It seems quite possible to us here that Owens could design a feeder which could get under the Tucker, Reeves & Beatty patents, and yet not under Hartford's other patents, and proceed to make a heat-resisting insulator. Such a feeder would probably not be suitable for making bottles but might be entirely adequate for producing a pressed insulator. Therefore we feel probably Levis and Belknap have some justification for the position they are now taking, and it would seem to us detrimental and dangerous to both our interests to permit a situation where Owens would start to scheme and try to develop some feeding mechanism which avoided our patents."

[fol. 3675] Was that subject-matter brought to your attention at that time?

Mr. Middleton: Does the Court have that exhibit before him? He will find it is a letter from F. Goodwin Smith to Amory Houghton, not to this witness.

Mr. Isseks: But it refers to the witness. That is why I am asking him whether it refreshes his recollection. The Belknap referred to in that letter is the witness, not W. J. Belknap, because the correspondence shows it is going to this witness.

Q. I am asking you whether at that time you told Mr. F. Goodwin Smith you contemplated doing what the letter says, namely, exercising the right you had under the Tucker, Reeves & Beatty patents for the purpose of making some kind of machine and device which could make heat-resisting ware and insulators?

A. I think we probably told them so. As a matter of fact our engineering department in Muncie spent a great many months and a great many thousand- of dollars trying to do it, without success.

Q. Do you know that Mr. F. Goodwin Smith said his engineers thought you could do it?

A. Maybe he has better engineers.

Q. In any event, you didn't go ahead and do it?

A. We have tried it, and have made some on it, but as I said, we couldn't make them on a commercial basis to compete with the modern feeders.

Q. You are not using it today?

[fol. 3676] A. No, that is my recollection we are not using it today. I would have to check on it with the Muncie people about the date.

Q. But you did say to Mr. F. Goodwin Smith as he says you said?

A. That we could use the Tucker, Reeves & Beatty patent feeder for that purpose, yes, sir.

Q. You didn't say, "I was kidding"?

A. No; I was trying to get a license from Corning, who had the right to use the feeder under the Hartford patent to make heat-resisting insulators, and we were trying to trade them out of the right, and without success.

Mr. Isseks: At this time I would like to offer in evidence a memorandum, which is undated and unsigned, and has on the top, "Memo re Tucker, Reeves & Beatty", and has a certificate, "I certify this is a true copy of the original in the files and records of this company, E. F. Martin"; no stipulation in regard to it. It is in Your Honor's book. I offer it in evidence.

(Same is marked Government's Exhibit 761.)

* * * * * * *

[fol. 3677] Q. I will ask the witness whether he wrote it. Maybe he did.

A. (After examining same.) I have no recollection of having written that memorandum. I do have a recollection of having discussed with Mr. Phillipps, our treasurer, the subject-matter of the second paragraph of that letter.

[fol. 3678] Q. Would you deny you wrote the memorandum, sir?

A. I could not deny or affirm it.

Mr. Isseks: I submit, in view of the witness' statement that he neither would affirm or deny he wrote it, and furthermore he recalls discussing the second paragraph of the memorandum——

The Witness: The subject-matter.

Mr. Isseks: —with Mr. Phillipps, who I believe is the treasurer of the company——

The Witness: He is now dead.

Mr. Isseks: At that time he was.

The Witness: He was treasurer of the company at the time. I said I remembered discussing the subject-matter. I didn't say I remembered discussing the second paragraph.

Mr. Isseks: The subject-matter of the second paragraph. That is what I said.

The Witness: No, you said the second paragraph.

The Court: I think I will sustain the objection.

Mr. Isseks: Exception, Your Honor.

Now, at this time I offer in evidence, memorandum dated December 28, 1935, written by the witness to Mr. F. Goodwin Smith, stipulated as to genuineness by Owens-Illinois, page 25 of the stipulation. (Government's Exhibit 762.)

The Court: It may be admitted.

(Government's Exhibit 762 read by Mr. Kramer.)

Mr. Isseks: At this time I offer the reply, dated January 4, 1936, addressed to C. B. Belknap by Mr. F. Goodwin [fol. 3679] Smith, stipulated as genuine by Owens-Illinois, at page 25 of the stipulation.

The Court: It may be admitted.

(Government's Exhibit 763 read by Mr. Kramer.)

Mr. Isseks: At this time I offer Government's Exhibit 764——

Mr. Middleton: Is it Your Honor's pleasure to be informed at this time what this situation was, covered by these two letters? It just occurs to me this is the time to have the explanation on the record, if there is one, so Your Honor will have it all in one place.

The Court: You mean an explanation through the witness?

Mr. Middleton: Yes, of this correspondence. Standing alone, it is not very informative.

The Court: I think it can wait until you take over the examination of the witness.

Mr. Isseks: I offer as Government's Exhibit 764, letter dated December 3, 1934, from S. F. Parham to C. B. Belknap, stipulated as to genuineness by Owens-Illinois, at page 24 of the stipulation.

The Court: It may be admitted.

(Government's Exhibit 764 read by Mr. Kramer.)

Mr. Isseks: At this time I offer in evidence as Government's Exhibit 765, photostat of an original letter dated December 10, 1934, addressed to Mr. E. F. Martin, signed "Hartford-Empire Company by S. F. Parham", stipulated [fol. 3680] as genuine by Owens-Illinois, page 25.

Q. I believe there is testimony Mr. Martin was assistant secretary and assistant treasurer of Owens; that is true, isn't it, Mr. Belknap,—that Mr. Martin was assistant secretary and assistant treasurer of Owens in 1934?

A. That is correct.

The Court: It may be admitted.

(Government's Exhibit 765 read by Mr. Kramer.)

[fol. 3681] Mr. Isseks: Your Honor, at this time I offer, as Government's Exhibit 766, a reply dated December 12, 1934, addressed to Mr. Parham, apparently signed by Mr. Martin; stipulated as to genuineness by Owens-Illinois, at page 25 of the Stipulation.

The Court: It may be admitted.

Thereupon, Government's Exhibit No. 766 was read to the Court by Mr. Kramer, of counsel for the government.

Mr. Isseks: Your Honor, at this time I offer in evidence, as Government's Exhibit No. 767, a letter dated December 27, 1934, addressed to Mr. Parham; signd "Legal & Patent Department, E. F. Martin, Assistant Secretary"; stipulated as to genuineness by Owens-Illinois at page 25 of the Stipulation.

The Court: It may be admitted.

Thereupon, Government's Exhibit No. 767 was read to the Court by Mr. Kramer, of counsel for the government.

Mr. Isseks: Your Honor, at this time I offer, as Government's Exhibit No. 768, a letter dated December 31, 1934, written to Mr. E. F. Martin, signed by the Hartford-Empire Company, by S. F. Parham, stipulated as to genuineness by Owens-Illinois, page 25 of the Stipulation.

The Court: It may be admitted.

Thereupon, Government's Exhibit No. 768 was read to the Court by Mr. Kramer, of counsel for the government.

[fol. 3682] Mr. Isseks: Your Honor, at this time I offer, as Government's Exhibit 769, a letter dated December 22,

1936, addressed to the witness, at Owens-Illinois Glass Company; re "Hartford-Empire Company v. Swindell Bros."; signed by Hartford-Empire, by S. F. Parham, stipulated as to genuineness at page 26 of the Stipulation.

Q. Mr. Belknap, who was the gentleman referred to in this letter, Government's Exhibit 769, as Mr. Holmes?

A. That is Mr. Minor Holmes, in charge of our factory at Muncie. They asked for him as a witness in the case, and we agreed that he could. I might say in most companies we have a rule that employes should not testify for other people, without consulting somebody, so that we may know where they are.

Q. Your company has contracts with inventors?

A. Yes.

Q. What is the general nature of the contracts had with your inventors, so far as inventions made by them are concerned?

A. That inventions made relating to the Company's business during the time of employment and for a short period thereafter become the property of the Company. The Company uses its own discretion as to what it pays.

Q. The inventions that you refer to, refer to not only inventions relating to the composition of glass, but to glass making machinery?

A. Yes, sir.

[fol. 3683] Q. And any type of machinery; it is not limited to bottles or the kind of equipment you make, but any types of glass-making machinery?

A. I have not looked at one of those inventor's contracts for some time. I assume it relates to anything in the Company's line of business.

Q. That might be in the Company's line of business, present or contemplated?

Mr. Middleton: Objection. He says he does not recall.

Mr. Isseks: I withdraw the question.

Q. Does your company have such an agreement with one Leonard Soubier, an inventor for your company?

A. No, Leonard Soubier has a different contract from any of our other employes.

Q. He does have a contract, though?

A. I don't know whether it has expired or not.

Q. Did he have a contract in 1936?

A. He did.

Q. The contract related to the inventions he made in the glass-making art, did it not?

A. Yes, sir.

Q. To your best recollection, you were entitled to any inventions he might make in the glass-making art, were you not?

A. I think that is correct.

Mr. Isseks: I should appreciate it if counsel would pro-
[fol. 3684] duce the contract which was in existence in 1936 between the Owens-Illinois Glass Company and Mr. Soubier.

The Court: It may be produced.

Mr. Middleton: We will undertake to furnish it.

Q. I show you Government's Exhibit No. 672, which is a memorandum addressed to you, dated September 15, 1936, re "Proposed Soubier Bulb Machine"; signed by Henry W. Carter; and ask you whether you received it in the regular course of business?

A. Yes, I think I did.

Q. You did receive it?

A. Yes, sir.

Q. Do you know whether or not now, offhand, any patent or invention or application for a patent which Mr. Soubier might have in connection with a bulb making machine would be covered by his contract?

A. I think it would be.

Q. Do you recall some time in 1937 your company was making an effort to get Corning to permit you—by you I mean Owens—to use the so-called ribbon machine for making tumblers?

A. We made such an effort; and I think that time is approximately correct.

Q. I show you Government's Exhibit No. 383, which is a letter dated June 16th, 1937, addressed to you, signed by Mr. Curtiss; stipulated as to genuineness by Corning; and
[fol. 3685] I ask you whether you received that letter in the regular course of business?

A. I cannot say I specifically recall receiving this letter; but I know I discussed that subject matter with Mr. Curtiss, and undoubtedly I received the letter.

Q. You discussed it also at various times, did you not, with Mr. Amory Houghton? There is a reference in the letter where it states:

"I understand you are likely to see Am. in New York next week, which will perhaps give an opportunity to clarify our position further."

A. Yes, they were trying to get a license from us under the burn-off patents, and we were trying to get a license on their ribbon machine. They succeeded in the first; we failed in the last.

Q. "Burn-off," you said something about "burn-off patents." That has not been mentioned in this case before.

A. Pardon me; may I see that memorandum?

(Memorandum shown witness.)

Q. The burn-off patent relates to your so-called safe-edge on tumblers?

A. It refers to the processes and machine for producing the safe-edge, and not to the safe-edge assembly.

Q. You were asked by Corning to give them a license to make that kind of a tumbler with the burn-off process?

A. We were asked to license them. We sent them a license.

[fol. 3686] Q. You finally did?

A. Yes, sir.

Q. In connection with those negotiations you were asking Corning for the right to a license on their ribbon machine to manufacture tumblers?

A. Yes, sir.

Q. They turned you down?

A. Yes, sir.

Q. They still have turned you down to this date?

A. I don't think we have asked them for some time for one.

Q. You know when a man says no?

A. No, I think it was a matter of price, more than "no."

Q. Did they offer you a license at a particular price?

A. No, we were negotiating for a license, and I thought we had agreed upon a royalty. They wanted a substantial license fee along with it. We decided that we would use our own machine, rather than that machine.

Q. By using your own machine; what kind of a machine did you have in mind?

A. The machine we used in the Libbey Glass Company, the so-called Westlake machine.

Mr. Isseks: At this time, Your Honor, I should like to offer a letter dated July 21, 1937, written to Mr. Amory Houghton. It says: "Re Burn-off Patents"; but I think it relates to the subject matter the witness has mentioned. It is not stipulated, but there is a certificate upon it. Is there any question about it, Mr. Sayles?

[fol. 3687] Mr. Sayles: I think not, with that certificate on it.

Mr. Isseks: There is no question about the authenticity, Your Honor. I should like to have it marked and I should like to have it offered.

Mr. Sayles: There is a question of privilege. May I look at it just a moment?

Mr. Isseks: Sure.

Mr. Middleton: We wish to lodge an objection to this, Your Honor, on behalf of Owens.

Mr. Sayles: I waive the objection.

The Court: It will be admitted, over objection.

Thereupon, Government's Exhibit No. 770 was read to the Court by Mr. Kramer, of counsel for the government.

Mr. Middleton: May I inquire, Your Honor, whether that is submitted as evidence of a conspiracy?

Mr. Isseks: Yes.

Mr. Middleton: Thank you.

Mr. Isseks: Any further questions?

Q. Mr. Belknap, do you remember learning some time in the latter part of 1937 that Mr. I. J. Collins, through his company, who at that time I think was either Anchor-Hocking or Hocking—it was just at a period when they changed from one company to the other—was interested in and about to manufacture heat resisting ware?

[fol. 3688] A. I remember whatever connection I had with it very clearly.

Q. At this time, I show you Government's Exhibit No. 372, and ask you whether you wrote this letter?

A. Yes, I wrote that letter, as a personal favor to Mr. Houghton. I saw him in New York. He said he understood Mr. Collins was going to engage in the manufacture of Pyrex ware; he had not seen him for some time; and he asked me if I saw him if I would talk to him before

he went in, because he did not want to sue him. It was just the same as if he asked me if Mr. Collins was going to buy the Fifth Avenue building in New York. That letter was written by me personally, and had nothing whatever to do with the Owens-Illinois Glass Company.

Q. Did you charge Mr. Houghton a fee?

A. I certainly did not.

Q. Were you ever asked by Mr. Houghton in connection with the sale of the Fifth Avenue building you mentioned?

A. What?

Q. You said just as if he asked you to purchase the Fifth Avenue building?

A. It was purely a personal matter. He asked me as a good friend to inquire about.

Q. How did you come to know Mr. Houghton originally; in connection with the sale of the building on Fifth Avenue?

A. I think I met Mr. Houghton along in 1932.

Q. At that time he was president, was he not, of the Corning Glass Works?

[fol. 3689] A. I would not know. Up until 1932 I had nothing to do with the Corning Glass Works. He was some officer of the Company. Whether he was president or not I would not know at that time.

Q. You do remember that Mr. Houghton, who was an executive head of Corning Glass Works, asked you to talk to Mr. I. J. Collins?

A. As I remember, he asked me exactly in the language I have repeated.

Q. He knew, did he not, at that time you were vice-president,—or were you executive vice-president in 1933?

A. What is the date?

Q. December 6th, 1933.

Mr. Middleton: Objection.

A. I was executive vice-president of the company.

Mr. Isseks: Counsel objects to the question whether you were executive vice-president in 1933.

Mr. Middleton: No, I did not. I objected to the question as to Mr. Houghton knowing what Mr. Belknap was.

Q. As far as you know, did he know you were executive vice-president?

A. I am pretty certain, he did.

Q. I think your words were, "He said, 'Will you do me a personal favor?'"

A. He asked me as a personal favor. I did not quote his words.

[fol. 3690] Q. To talk to Mr. I. J. Collins?

A. He asked me to ask Mr. Collins if he would talk to him before he went into the manufacture of the Pyrex type of ware.

Q. At that time, Mr. I. J. Collins was executive head of either the Hocking Glass Company or the Anchor-Hocking—Your Honor, I say that because just about that time there was a reorganization—I do not mean to confuse the witness—you know just about that time, at the end of 1937, Hocking became Anchor-Hocking through some form of agreement?

A. He was some executive head of the company, whether president or not.

Q. You went and talked to this gentleman, the executive head of the company; your company was a competitor, was it not, of the Owens-Illinois Glass Company?

A. No, I happened to meet him in a hall of a building here in Toledo.

Q. Which building?

A. I think probably it was our office building.

Q. That is what I thought. You then said to him what you would say to Mr. I. J. Collins?

Mr. Middleton: I don't know—I suppose we should, in view of this examination, place on the record that Mr. Collins' attorneys are in the same building. We do not want any improper deductions from this.

Mr. Isseks: I will stipulate that; also that counsel for [fol. 3691] Owens are in the same building.

Mr. Middleton: Surely—unfortunately.

Mr. Isseks: The witness volunteered the statement that he met him in the building. I always want to get all of the facts.

Q. Then what did you say to Mr. Collins and what did Mr. Collins say to you?

A. I said to Mr. Collins that Mr. Houghton asked me recently when I saw him in New York the last time, if I saw Mr. Collins before he got in touch with him, that he

would like to talk with him before he went into the manufacture of Pyrex ware.

Q. What did he say to you?

A. He said he would.

Q. Did you say anything else, or he say anything else?

A. No, that was the sum total.

Q. Then you wrote this letter—the testimony is that you said to him, "Amory asked me to talk to you before you went into the Pyrex business;" and Mr. I. J. Collins said, "Yes;" and then you wrote this letter:

"With reference to the Pyrex situation which you talked to me about in New York at our last meeting, I have secured a promise from Ike that he would not start to market in that line without first discussing it with you and your associates."

You wrote that letter, did you not?

A. I certainly did.

[fol. 3692] Q. That recorded your conversation, did it not?

A. I think I have repeated as near as I can recall my conversation.

Q. Do you know whether Mr. I. J. Collins kept his promise that "he would not start to market in that line without first discussing it with you and your associates"?

A. As far as I know; he might have sold it the next day.

Q. As far as you know, has Mr. Collins' company ever produced Pyrex ware since that date, until October 7, 1940?

A. I don't know how I would have any knowledge of whether he did or did not. By hearsay, I would think that he has produced ware of the type of Pyrex, that is, in the sense that it is heat resisting ware of a lower coefficient of expansion than the ordinary ware.

Q. When did he start that, do you know; and when did you find out about it?

A. It would be some time subsequent to that letter.

Q. You say he did?

A. No, I said I only got it by hearsay, I have no personal knowledge that he is manufacturing it today.

Mr. Isseks: At this time, Your Honor, I should like to have marked as the next exhibit a letter dated May 22, 1939, written to Mr. Belknap, apparently signed by Mr. Curtiss.

This document was furnished to us by Corning within the last two weeks. It has attached to it a memorandum, which [fols. 3693-3695] I should also like to have marked, addressed to Mr. Curtiss; and signed by Mr. F. H. Knight. It is dated May 17, 1939. It is quite obvious that it was attached to the document referred to here; at least that is the way we got it from Corning.

Government's Exhibit No. 771 is dated May 22, 1939, addressed to Mr. Belknap, subject "Tumbler License"; given to us by Corning in the last two weeks, pursuant to the last subpoena.

Government's Exhibit No. 772 was attached to it physically.

I offer them in evidence, Your Honor.

Mr. Middleton: May we object, Your Honor, to the introduction of these exhibits, and to any evidence with respect to this, on the ground that there is no issue in these pleadings whatever to which this is pertinent or relevant.

* * * * * * *

[fol. 3696] The Court: I am going to admit Exhibits Nos. 771 and 772.

* * * * * * *

[fol. 3697] Mr. Isseks: At this time, Your Honor, I offer as Government's Exhibit No. 773, a letter dated June 24, 1939, addressed to Mr. Curtiss, of the Corning Glass Works; signed "Bunn".

Q. I ask you, Mr. Belknap, whether you wrote that letter?
A. I did.

Mr. Isseks: I offer it in evidence, Your Honor.

Mr. Middleton: Objection, Your Honor, on the same [fol. 3698] ground, that it is irrelevant to the issues.

The Court: It may be admitted.

Thereupon, Government's Exhibit No. 773 was read to the Court by Mr. Kramer, of counsel for the government.

Mr. Isseks: At this time, Your Honor, I offer, as Government's Exhibit No. 774, a letter dated August 14, 1939, addressed to Mr. Curtiss; signed by the witness, "Bunn". I ask you whether you wrote that letter?

A. I did.

Mr. Isseks: I offer it in evidence, Your Honor.
Mr. Middleton: The same objection.
The Court: It will be admitted, over objection.

Thereupon, Government's Exhibit 774 was read to the Court by Mr. Kramer, of counsel for the government.

Q. As late as August, 1939, you were still trying to get a license to make tumblers on the ribbon machine and the Turret machine?
A. Yes, sir.
Q. And you were unsuccessful?
A. Yes, sir.
Q. Have you made any attempts since then, sir?
A. No, as I told you, we had not made any attempts since then, that I recall.
Q. Do you have any recollection of learning in 1938 from Mr. J. H. Wright, connected with your company, of some [fol. 3699] information he had obtained from the Corning people that they were going into the container field?
A. I have a recollection of having received a memorandum from him to that effect.
Q. You are referring to Government's Exhibit No. 715, in that connection, dated April 22, 1938, where he states:

"Before leaving the city, I do want to call to your attention a matter which developed at a meeting which we held in Columbus last Tuesday. Corning asked us if we would meet with them separately, which we did. They stated that they were going into the container field, and that they would like to have from us, some ideas as to what we would recommend as they approached that field."

Then he says,

"Needless to say, I didn't give them our picture of distribution, but I did tell them that if they were contemplating going into the container field, they were walking into a program in which they might have a lot of grief"—

"The outstanding point, however, I want to bring to your attention is that they are apparently going into the container field. I think if you can do anything to keep them out of this field, it will be helpful to us and helpful generally".

[fol. 3700] Do you remember receiving that memorandum?
A. I remember receiving that memorandum. When he

speaks of the container field there, he is speaking of the use of tumblers in the container field as package ware. Nothing was done towards keeping them out of the field, so far as I know.

Q. Did they ever go into the field?

A. Whether they have ever used their tumblers on package jars, I don't know.

Q. Did you ever talk to anybody in your company about the subject matter of this memorandum after you received it?

A. No, I told Mr. Wright to forget it.

Q. Did you talk to Mr. Levis about it?

A. Not that I recall.

Q. Did you talk to Mr. Amory Houghton about it?

A. No, sir.

Q. Did you talk to Mr. Curtiss?

A. No, sir.

Mr. Middleton: On the strength of the testimony, I move that the exhibit be stricken.

The Court: Which exhibit is that?

Mr. Middleton: 715.

(Copy shown Court.)

Mr. Middleton: Mr. Wright was president of the Libbey Company. It is an inter-office memorandum.

Q. Who is Mr. Wright?

A. President of the Libbey Glass Company.

[fol. 3701] Q. In 1938, what connection did the Libbey Glass Company have with the Owens-Illinois Glass Company?

A. They were a wholly-owned subsidiary.

Mr. Isseks: I submit that it is a perfectly proper exhibit.

The Court: The motion will be overruled.

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[fol. 3702] Thereupon, the government called as a witness, WILLIAM E. LEVIS, who, being duly sworn, testified:

Direct examination.

By Mr. Isseks:

Q. Mr. Levis, with what company are you connected?

A. The Owens-Illinois Glass Company.

Q. How long, sir, have you been connected with that company?

A. Since April 17, 1929.

[fol. 3703] Q. Have you been an officer of that company since that date?

A. Yes, sir.

Q. Please state chronologically, to your best recollection, the different positions you have held in the company.

A. I was elected vice-president and general manager on April 17, 1929; president of the company, on January 14, 1930; and chairman of the Board, January 17, 1941.

Q. Throughout the entire period you have been a director of the Company, have you not?

A. Yes, sir.

Q. Prior to your becoming a vice-president, I think you said, and general manager of the Owens-Illinois Glass Company on April 17, 1929, were you connected in any way with any other glass company?

A. Yes, I was president of the Illinois Glass Company.

Q. How long did you hold that position, sir?

A. Until its dissolution in 1938.

Q. The Illinois Glass Company: was that its name—you may refresh your recollection from notes?

A. No, I am just giving the date: it was September 9, 1938.

Q. How long prior to April 7, 1929, were you president of Illinois Glass Company?

A. About three years.

Q. That takes it back to 1926?

A. Yes, sir.

[fol. 3704] Q. Prior to that time were you connected with the same company?

A. Vice-president and general manager from 1924 until 1926.

Q. Prior to that time were you connected with the company in any way?

A. I was assistant secretary from about 1922 until 1924. I started to work there in 1913.

Q. Except for the war period, you have been active with the company ever since 1913?

A. I worked for the company.

Q. You were connected with it?

A. Yes, sir.

Q. Your father was connected with the company, was he not?

A. My grandfather also.

Q. Your father and grandfather?

A. Yes, sir.

Q. Does it go back any farther than that?

A. No, sir.

Q. You have been connected with the glass company since you were a young man, in 1913?

A. Yes, sir.

Q. First you started in a minor capacity and later on became an executive?

A. I started working in the factory and did every job there was to do.

Q. You said you were president of the Illinois Glass Company to 1938?

A. Yes, sir.

[fol. 3705] Q. Did the company continue having its corporate capacity after April 17, 1929?

A. Oh, yes.

Q. That company did: Was it in the glass business?

A. It held securities in the glass business, in the business of its customers; and it held the investments that it owned prior to April, 1929, which other assets it sold for senior securities and shares in the Owens-Illinois Company.

Q. It was not in the manufacturing business after April, 1929?

A. No, sir.

Q. What was the exact date when the assets of the Illinois Glass Company—by assets I mean glassware machine assets—were turned over to the Owens Bottle Company?

A. The contract was dated December 31, 1928; and it was subject to approval and ratification of the Owens-Illinois shareholders at their annual meeting, April 17, 1929. So the contract was approved on April 17, 1929, and became effective as of the close of business the last day of the year in 1928.

Q. So that, for all purposes, since the effective date of the contract, December 31, 1928, the Illinois Glass Company discontinued operating as a manufacturing company, and just simply held securities in various glass manufacturing companies and other companies?

A. It did not commence to do it, sir, on that date; it [fol. 3706] already was doing that; and it owned, in addition to the securities it had in other businesses, its bottle and paper and sand making assets.

Q. Those assets went over to Owens?

A. They sold those for securities in the Owens-Illinois Company.

Q. Was it at that time called the Owens Bottle Company?

A. When they were sold, its name had been changed.

Q. Since that date, the Illinois Glass Company was out of the business of making glassware?

A. At the close of business of 1928.

Q. It continued thereafter to hold securities it had at that time, plus additional securities it acquired in connection with that transaction, and some other securities?

A. Yes.

Q. It was not in the manufacturing business from the glass standpoint?

A. That is right.

Q. You continued as president of that company?

A. Yes, sir.

Q. A gentleman by the name of R. H. Levis was connected with that company, too?

A. Yes, he was chairman of the Board.

Q. Of the Illinois Glass Company?

A. The Illinois Glass Company.

Q. Did he become in any way connected with the Owens-Illinois Glass Company?

A. He became a director of the Owens-Illinois Glass Company.

Q. And he continued as a director of the Owens-Illinois [fol. 3707] Glass Company until some time in 1938, did he not?

A. Yes, sir.

Q. He also became an officer of the Owens-Illinois Glass Company?

A. He may have been. I do not know that.

Q. The answer of the defendant Owens-Illinois, including yourself, states, in Paragraph 20, that Mr. R. H. Levis was a director from April 17, 1929, to August 24, 1938; a vice-president from April 17, 1929, to April 18, 1934?

A. That is probably so.

I should like to make clear, just for the purpose of the record, that during that interim period, the name Illinois

Glass Company may have been changed. At one time it was called the Illinois Glass Consolidated Corporation, which owned the shares of the Illinois Glass Company, which was the operating company; but subsequent to the date of the sale of the assets, the bottle making, paper and sand assets, to Owens-Illinois, its name was again changed back to Illinois. So when I say the Illinois Glass Company, I mean the same corporate structure that really started out in 1873; and while it had various changes of names, it was the Illinois Glass Company, so far as those questions were answered.

Q. When you refer to the Illinois Glass Corporation, we mean this company that held the stocks and securities in various companies, including the Owens-Illinois?

A. I even mean before, when it was an operating company also.

Q. While it was an operating company, prior to Decem-
[fol. 3708] ber 31, 1928, it held securities in other companies?

A. Yes; and it was of varying names. I am describing it as the Illinois Glass Company, even though that might not have been its actual corporate name over that period.

Q. The stock which was acquired by the Illinois Glass Company in Owens-Illinois was not distributed by the Illinois Glass Company, was it?

A. Oh, no. The Illinois Glass Company acquired very little stock from Owens. It acquired mostly senior securities, and it remained in business as an investment trust, holding securities in the glass business and the business of other customers.

Q. Was any stock acquired by the stockholders of the Illinois Glass Company when they turned over the assets to the Owens-Illinois Company, or was it simply senior securities?

A. I think there was a small amount of stock like 30,000 shares. The contract, of which you have a copy, shows the exact consideration.

Q. Are you a stockholder of the Owens-Illinois Glass Company?

A. Now?

Q. Yes.

A. Yes, sir.

Q. Have you been for some time?

A. I think I bought 100 shares to qualify as a director when I was elected to the Board in 1929.

Q. Have you acquired any stock since then?

A. I may have purchased a few shares, but my holding [fol. 3709] that is of any size came from the liquidation of the Illinois Glass Company in September, 1938.

Q. Was Mr. R. H. Levis in the same position, namely, in holding stock in Owens-Illinois, which had come through this what you call investment trust?

A. Through liquidation of the Illinois Glass Company, although I cannot say whether Mr. R. H. Levis personally owned a few shares in the Owens-Illinois Glass Company.

[fol. 3710] Q. Do you remember writing a memorandum of the policy—price policy, of the Owens-Illinois Company shortly after you became connected with that company?

A. I don't remember writing the memorandum but the thought expressed in it is my thought.

Q. You don't question that you wrote it, though?

A. No.

Q. I will show you a document which I am going to have marked Government's Exhibit 775, and I will ask you whether that is the document you had reference to when I asked you if you wrote a memorandum about a price policy?

A. Yes.

Mr. Isseks: I will offer it in evidence.

Q. Approximately what date did you write this memorandum, sir?

A. As near as I can testify, judging from records there was a memorandum called "Penalty of Leadership" which was undated, and we apparently sent that letter to the Owens-Illinois Board sometime in February, 1931, or February, 1932. It is that letter we stipulated, the carbon copy of which I had, was addressed to R. H. Levis, but it was addressed to all of the members of our Board and I must have prepared that memorandum preparatory to the memorandum that went to our sales force, copy of which was sent to our Board about that time.

Q. You say either February, 1931, or February, '32?

A. If I could see the papers I could tell the date.

Mr. Isseks: I will take counsel's statement as to any date he mentions. We have reference to 775, memorandum [fol. 3711] written by him.

A. Henry has them there, stipulations No. 1 and 2.

Mr. Isseks: You mean Mr. Middleton. Subject to correction on it as to date, I offer the documents in evidence. There is no dispute about the fact he wrote it. The only question is the date.

(Mr. Middleton shows papers to the witness.)

A. It is February 13, 1930.

Q. That is the approximate date?

A. That is the date I sent the other and I must have written that other memorandum prior to that date.

Mr. Middleton: Then he will want to change his '31 or '32——

Mr. Isseks: Yes, that is all right. The witness said he wrote it, prior to February 13, 1930.

Q. Is that right, sir?

A. That is my best guess. There is no date on the memorandum. I don't recall writing it but I know it states what I thought and I identify it in date by the memorandum subsequently following it, or referring to it, which was mailed to our Board on the February, 1930, date.

Q. I understood you to say before you do not question that you wrote it?

A. No.

The Court: It may be admitted.

(Exhibit 775 is read by Mr. Kramer.)

Q. Mr. Levis, I now show you Government's Exhibit 585, which is a letter you wrote to Mr. F. Goodwin Smith. That [fol. 3712] is your signature, isn't it?

A. Yes.

Q. I will ask you whether at that time that letter represented your views in regard to the subject-matter of the whole?

Mr. Wall: What is the date?

Mr. Isseks: Dated October 11, 1930.

Mr. Middleton: Does Your Honor have a copy of this exhibit referred to,—585?

The Court: I have a copy here but I haven't read it.

Mr. Middleton: If not we would be glad to furnish it.

The Court: I have it here.

A. Yes. That represented my point of view at that time.

Q. Thank you, sir. Now, I ask you whether you recall having a conference with representatives of Hartford and particularly Mr. F. Goodwin Smith and Mr. Knox Smith, on Armistice Day, 1931, November 11th, regarding your views as to prices in the glass container industry?

A. No. I don't believe I do. If you can refresh my recollection I may.

Q. I will try my best, sir. Do you remember having a talk with these gentlemen I mentioned and do you remember Mr. Ben Hazelton being present at the time?

A. Armistice Day 1931?

Q. Yes, sir. It is either in New York or Hartford, sir?

A. I have never been in Hartford.

[fol. 3713] Q. All right, sir. Then it probably was in New York?

A. I don't recall. If you will refresh my recollection I will try to, sir.

Q. I will do the best I can. Do you remember telling these gentlemen that you were interested in a constructive policy of leadership in connection and cooperation of prices by means of a quota system?

Mr. Middleton: I object to the question, since there is nothing in the record to warrant a question that way, contains the conclusion that that happened. We are again going to something which is in a diary which is not in evidence.

The Court: Counsel might show the memorandum that he has.

Mr. Isseks: I am trying to see if he has an independent recollection without a memorandum. I am trying to see if I can exhaust his memory first. If it were not for the fact he were a hostile witness——

The Court: I suggest first you ask him with reference to the persons present at this meeting, where it was held if you have that information. That is better than to ask an abstract question of something that was said there.

Q. Do you recall having a meeting at New York on Armistice Day, 1931, in which were present F. Goodwin Smith, yourself and Ben Hazelton?

A. I said I don't remember, but if you have something to refresh my memory I will do the best I can to recall it.

[fol. 3714] Q. And do you remember meeting with those gentlemen and Herbert Knox Smith at that time?

A. Since the trial has been going on, I have tried to recall ever having had a conference with Mr. Herbert Knox Smith. I don't remember him.

Q. Don't remember seeing the gentleman at all?

A. I have tried to recall it, but I have had practically no contact with him, sir, except in 1923, which was a long time ago, and that I was just present at, so I don't remember talking with Herbert Knox Smith in 1931.

Q. Do you remember telling Mr. F. Goodwin Smith that you had talked to Mr. McNash about the advisability of stabilizing prices in the glass container industry by use of a quota system?

A. I don't remember ever telling anybody that. I might have written, but I never thought that, sir.

(Question and answer read.)

A. I might have written something about that but I never thought of that.

Q. If you wrote it, sir, we will show it to you. If we haven't got it we will ask for it. I will show you Government's Exhibit 412, as to which an objection has been made and sustained, which purports to be a diary entry November 11, 1931. I ask you whether that refreshes your recollection that you had a conference with Herbert Knox Smith, F. Goodwin Smith, and Ben Hazelton, somewhere in New York City, on Armistice Day, 1931?

Mr. Middleton: May we inquire who was supposed to [fol. 3715] have made the entry?

Mr. Isseks: Herbert Knox Smith, the one who unfortunately died in December, 1931.

Mr. Middleton: We object to the use of it.

The Court: Overruled. It may be used by the witness for the purpose of refreshing his memory.

Q. My question is if you recall that conference?

A. No. I do not.

Q. You do not?

A. I do not.

Q. Your mind is a complete blank on it; you don't remember anything about any conference with those gentlemen?

A. I don't remember about having any conference with Herbert Knox Smith.

Q. Never recall having seen the gentleman?

A. No.

Mr. Middleton: Do you mean in November or after?

A. I told him I have been trying ever since this case has been on, to picture him in my mind and to picture any contact that I had with him, and I don't recall one.

Mr. Williams: You said you had contact with him in '23?

The Witness: I said I knew from the record that I had contact in '23 but that was so long ago I probably would not have remembered it.

Q. There was testimony here, and statements of counsel, that Mr. Herbert Knox Smith was a man of great accuracy. Would that in any way refresh your recollection as to [fol. 3716] whether or not you ever saw Herbert Knox Smith?

Mr. Luther Day: I object to whether that refreshes his recollection.

The Court: Counsel seems to be serious about his question. I will not interfere. He may answer.

Q. Does that refresh your recollection?

A. No.

Mr. Isseks: At this time I offer a letter dated December 31, 1931, addressed to the witness, signed by McNash, stipulated as genuine by Hazel-Atlas at page 5 of the stipulation, as Exhibit 776. I offer it in evidence.

The Court: It may be admitted.

Q. Before I have it read I would like to ask the witness one question: did you have any conferences with Mr. F. Goodwin Smith?

A. Many.

Q. You know him, don't you?

A. Yes.

Mr. Isseks: I would like to have this document, Exhibit 776, read.

(Exhibit 776 is read by Mr. Kramer.)

Q. Did you receive that letter, sir?

A. Yes, sir.

Q. Did you reply to it, sir?

A. I don't think so.

Q. When you first became connected with the Owens-Illinois Glass Company you became familiar with the con-[fol. 3717] tract which the Owens-Illinois Glass Company had with Hartford-Empire Company?

A. You mean the 1924 contract?

Q. Yes.

A. No, I didn't know much about it.

Q. You mean after you became vice-president and general manager of Owens-Illinois you did not know much about it?

A. I didn't know much about it even then, sir.

Q. Did you know at that time the fact that your company was entitled to collect certain royalties?

A. Oh yes. I knew that business phase of it but I don't know the history of its negotiations.

Q. I didn't ask you that, sir. I mean if you were familiar with the contract itself?

A. No, just the business features of it. I never read the contract.

Q. You knew that your company was entitled to one-half of the net divisible income?

A. Yes.

Q. You knew there was a Section 22, did you not, which gave your company a certain veto power in certain instances?

A. I was advised that by both Mr. Carter and Mr. Williams.

Q. And you set forth in Government's Exhibit 775, in the fifth paragraph, "Our negotiations with Hartford-Empire Company and others, so far as our patent situation and royalty income is concerned, should be to attempt to secure a position whereby we pay no royalty on any item we produce and we attempt to force all others to pay [fol. 3718] royalty on every "item them produce, we participating with anyone else in the royalties they receive." That was your position in February, 1930?

A. That was the way I stated it to myself.

Q. You passed it around to your directors, too?

A. No. I said that memorandum on penalties of leadership was passed around, which was prepared in the early part of 1930. It had the same feature that I thought of

but it did not talk about the other feature, because that was not a part of our sales business.

Q. You knew from a business standponit, after you became connected with the company, that your company was getting more from Hartford than it was paying?

A. I knew that before I became connected with the company. I paid royalty to both of them.

Q. You knew also, did you not, shortly after you became connected with the company, that Hazel-Atlas had not been paying royalties to Hartford?

A. I knew that long before I became connected with the Owens-Illinois. Everybody in the industry knew that.

Q. After you became connected with Owens you were interested in an effort to get Hazel-Atlas to come in and pay royalties?

A. I was interested in getting everyone to pay royalties so I could participate in some portion of it.

Q. You knew, did you not, shortly after you became connected with the Owens Company, that there was a lawsuit which was brought by Hartford against Hazel-Atlas, and [fol. 3719] that suit was decided adversely to Hartford by the Court of first instance in Pittsburgh?

A. I never followed those lawsuits. That was up to our patent lawyers. I never thought the royalty end or patent end of our business was doing us any good anyway, and when I wrote that in 1929 or '30 I was trying to convince our people we better get out of that business as quick as we could.

Q. You stated in that memorandum, Exhibit 775——?

A. I stated even if we could do those things I stated there we could not make a profit.

Q. You did not state anywhere in here you could not make a profit?

A. I wrote it to myself.

Q. You did not put it in the memorandum you could not make a profit?

A. I did not put in the memorandum a lot of other things.

Q. But you did say "We should attempt to secure a position whereby we pay no royalty on any item"——?

A. I said if our organization got efficient so that everybody feared us and we could keep our portion of the business, that we would get stability and then if we run our royalty business as efficiently as we can run our organiza-

tion, it might be we could make a profit after all of that, and that was what I was setting out to do.

Q. But you were stating to yourself here that you should "attempt to secure a position whereby we pay no royalty on any item we produce and we attempt to force all others to [fol. 3720] "pay royalty on every item they produce, we participating with anyone else in the royalties they receive"?

A. No more so than I was stating to myself everybody who is ineffective should get off of the payroll and everybody who was on the payroll should give us 100% efficiency.

Q. Then you testified your desire to get Hazel-Atlas in and everyone else?

A. Everyone else. I even wrote letters to my uncles and told them about it.

Q. You were anxious to get all these people to pay royalties in order that you might participate in these royalties?

A. Then I stated, I believe, if I still participated in the royalties I would not be able to make a profit.

Q. You like them, though?

A. I did not own the business. It was not mine any more than some of the other people I worked for. I thought my job was to make the business profitable, whether I sold bottles or whether I reduced costs or whether I collected royalties, and I felt it was my job, if any division of the business was not paying, to throw it out.

Q. Did you, in 1929, throw out this royalty business?

A. I did my best to start.

Q. But you didn't in 1929?

A. No.

Q. And you didn't in 1930?

A. No. I didn't think myself in the saddle long enough to have thrown it out then or I would have had myself thrown out with it.

[fol. 3721] Q. In 1935 you got two and one-half million dollars in order to stop collecting royalties?

A. You can state it that way. I won't.

Q. How would you state it?

A. After the conclusion of a long series of events,—which I presume the documents that you are going to question me about,—I will make my side of the argument if you want to go right through to the point. I am willing to give you my answer.

Q. Now, have you got any piece of paper anywhere anyplace in your files, your memorandum book, your diary, your letters to your uncle, anyplace where you wrote, in black and white, before 1935, or at any time up to 1938, that you did not like the idea of collecting these royalties? If you have, please submit it to us.

A. I would like to bring in about 300 character witnesses in my organization to tell you that was my idea.

Q. Produce one piece of paper, any single piece of paper, one line, please?

A. How long will you give me to do it?

Q. As long as you want.

A. I will produce it before we end this case.

Q. All right, sir. One piece of paper. I request one piece of paper.

A. You did not read all of our minutes. You took an inch out of about four feet.

Q. You produce it?

A. I will try to produce it before November, whether I [fol. 3722] wrote it or not.

Q. Whether anybody wrote it, whether you said you did not like royalties, let's get it all.

A. I wrote it and I think I know where I can pick it up.

Q. Thank you, sir. We haven't got it or I would show it to you.

The Court: We will suspend at that point.

The bailiff may recess court until tomorrow morning at 10 o'clock.

(Night Adjournment.)

[fol. 3723] (At 10 o'clock a.m., Wednesday, April 16, 1941, the trial was resumed.)

WILLIAM E. LEVIS resumed the stand.

Mr. Middleton: May it please Your Honor, and Mr. Isseks, at the close of yesterday afternoon's session, Mr. Isseks requested the witness, Mr. Levis, to produce any paper that he might be able to find which stated the attitude with respect to royalties which he expressed on the stand yesterday. Mr. Levis did not have very much time last night to look for that sort of statement, because today is the meeting of the shareholders, and he is very busy; but in a very hurried search he did locate one such statement, which is

contained in his report to the board of directors of Owens-Illinois Glass Company of January 20, 1931, which was at the close of his first year as president of the company; and Mr. Levis is prepared to present that, Mr. Isseks, in response to your request. I have here an excerpt from it, and I also have the 20-page report, the original from which the excerpts were made.

Mr. Isseks: Without looking at it, except glancing, I offer it in evidence. I also would like to have the 20-page report.

Mr. Middleton: You don't want to put all that in the record?

Mr. Isseks: After I read it, I may.

Mr. Middleton: I don't think you want to encumber the record. We have lots of those reports. That is only one. [fol. 3724] A great stack of reports.

Mr. Isseks: Do I understand counsel to say there are stacks of reports dealing with the fact Owens and the witness was not interested in collecting royalties?

Mr. Middleton: No, I didn't say that. I say we have stacks of reports to the board. This is only one of a great number, and the government has gone through all of them.

Mr. Isseks: I would like to have this read.

(Excerpt marked Government's Exhibit 777.)

Mr. Isseks: Excuse me, did Your Honor admit it?

The Court: Yes.

(Exhibit 777 read by Mr. Kramer.)

Q. You wrote that, sir, did you not?

A. Yes, sir.

Q. You are going to furnish us with any other document like this? I like it, I think I appreciate that.

A. (No response.)

Mr. Middleton: If Your Honor please, Mr. Isseks was satisfied yesterday with one. We have produced one. I think there are probably others.

The Witness: We have a number of them, Mr. Isseks.

Mr. Isseks: I would like to have them all. They prove my case.

Q. Now, I believe you testified yesterday,—and I better [fol. 3725] read the record,—about Herbert Knox Smith, you said yesterday, page 2430:

"Q. And do you remember meeting with those gentlemen and Herbert Knox Smith at that time?

"A. Since the trial has been going on, I have tried to recall ever having had a conference with Mr. Herbert Knox Smith. I don't remember him.

"Q. Don't remember seeing the gentleman at all?

"A. I have tried to recall it, but I have had practically no contact with him, sir, except in 1923, which was a long time ago, and that I was just present at, so I don't remember talking with Herbert Knox Smith in 1931."

And on page 2431:

"Q. * * * you don't remember anything about any conference with those gentlemen?

"A. I don't remember about having any conference with Herbert Knox Smith.

"Q. Never recall having seen the gentleman?

"A. No.

"Mr. Middleton: Do you mean in November or after?

"A. I told him I have been trying ever since this has been on, to picture him in my mind and to picture any contact that I had with him, and I don't recall one.

"Mr. Williams: You said you had contact with him in '23?

"The Witness: I said I knew from the record that I had contact in '23 but that was so long ago I probably would not have remembered it."

[fol. 3726] Is that still your recollection, sir?

The Witness: Yes, sir; I have tried to refresh it. I couldn't tell you whether he was tall or short or had a mustache or wore glasses, or what.

Q. You are pretty certain in your mind you never met Mr. Herbert Knox Smith?

A. No, I am not; I said I cannot recall.

Q. You said you might have seen him in '23, and something about a record; what was that about?

A. This Mr. Ashcraft was then conducting negotiations for revisions of the Illinois-Glass Company's Hartford-Fairmont contract, and I was like Mr. Naylor was with Mr. Carter,—carrying his brief case.

Q. Yes, sir, and where did you see him?

A. I presume that it was in New York, and I presume that once in Toledo we had a conference, but I don't recall whether he was here or not.

Q. It was all back in 19——

A. It must have been '23 or '24, sir.

Q. And that related to what?

A. The Illinois Glass Company's revising the contract with Hartford-Fairmont Company.

Q. What about after you became associated with Owens-Illinois Glass Company, did you see him then?

A. I may have, but I have no recollection.

Q. At this time I show you an excerpt from Herbert Knox Smith's diary, dated April 6, 1926, which refers to a conference in New York with Mr. F. Goodwin Smith, yourself [fol. 3727] and Mr. Ashcraft.

Mr. Haight: We ask that be stricken out, in accordance with Your Honor's ruling, stating what it refers to.

Mr. Isseks: Refers to a conference.

Mr. Haight: No, just ask him whether it refreshes his recollection, without stating what they did. That was Your Honor's ruling.

The Court: Yes, he may ask if it refreshes his recollection.

Mr. Middleton: Is it understood that the comment is stricken from the record?

The Court: Yes, it may be stricken.

Q. I show the diary entry, and ask you if that refreshes your recollection of having a conference or having met Herbert Knox Smith in 1926.

Mr. Middleton: We object to that question, because it still contains the inference.

The Court: I think there should be no objection to that. I think there has to be some basis for refreshing his recollection on some particular subject.

Mr. Isseks: I would like to have it marked, with the understanding that Your Honor is going to sustain the objection, as the next government's exhibit. Government's Exhibit 778.

Q. The question is whether it refreshes your recollection you met Mr. Herbert Knox Smith in 1926?

A. (After referring to same,) It refreshes my recollec-
[fol. 3728] tion that I was at this conference but I don't recall Mr. Herbert Knox Smith.

Q. You don't recall it but you had a conference with whom?

A. I was with Mr. Ashcraft, this memorandum states.

Mr. Haight: Don't state what the memorandum states.

Mr. Isseks: If it refreshes his recollection, I submit he can state it.

The Court: Does it refresh your recollection?

The Witness: Yes, sir.

Q. What is your recollection?

A. I recollect there was a conference in New York in 1926 regarding the Illinois Glass Company's fruit-jar license and this memorandum says Mr. Herbert Knox Smith was there.

Q. Anything else you remember about the conference, after looking at the memorandum?

A. No, sir.

Mr. Isseks: I renew my offer of the document.

Mr. Haight: We object.

The Court: Objection will be sustained.

Q. At this time I show the witness—you don't want that any more—will it help you out any more? (Referring to Government's Exhibit 778.)

A. No, sir.

Q. At this time, Mr. Levis, I show you what purports to be excerpt from diary entry of August 8, 1929,—and for the record, the last exhibit purports to be a diary entry of Herbert Knox Smith of April 8, 1926, and the one I now
[fol. 3729] hand the witness purports to be a diary entry of August 8, 1929,—and I ask you whether that diary entry refreshes your recollection that you had a conference with Herbert Knox Smith in 1929 after you became associated with the Owens-Illinois Glass Company?

I would like to have it marked as the next exhibit. (Marked Government's Exhibit 779.)

A. (After examining same.) I don't recall this particular conference. I recall the subject-matter.

Q. My question is specifically limited to whether or not it refreshes your recollection of having met Mr. Herbert Knox Smith in 1929?

A. No, sir.

Q. Your recollection still is, as I understand it, you don't remember ever having met Mr. Herbert Knox Smith?

Mr. Haight: I object. That is not what the witness said.

Q. Except in 1923 or 1926? I will amend that in view of the witness' testimony.

A. (After previous question is read.) Ever since the trial of this case began, I have been trying to recall in my memory Mr. Herbert Knox Smith and having met him, and I have been unable to do so.

Q. I show you Government's Exhibit 129, and ask you whether that is your signature, letter dated December 2, 1931, addressed to Mr. F. Goodwin Smith?

A. Yes, sir.

Q. Will you please hold it and see if it does not refresh [fol. 3730] your recollection you met Mr. Herbert Knox Smith, and I direct your attention to the first paragraph:

"My dear Goodwin: It was a pleasure to see you in New York on Monday and to talk with you and Herbert Knox Smith regarding the Hazel-Atlas situation and other matters pertaining to the glass industry."

I ask you if that does not refresh your recollection that you did, some time after you became associated with the Owens-Illinois Glass Company, meet Herbert Knox Smith?

A. No, sir.

Q. But you don't dispute you met him?

A. No, sir, I don't dispute it. I have said since this trial started I have been trying to recall him and I have been unable to do so.

Q. I again show you Government's Exhibit 412,—which I showed you yesterday, diary entry of November 11, 1931, to which objection has been made and sustained,—and that, you will note, is less than a month before Government's Exhibit 129, stating that it was a pleasure to see you in New York and talk to you and Herbert Knox Smith—and I ask you whether, looking at those exhibits 129 and 412, they do not refresh your recollection you saw Mr. Herbert Knox Smith in November, 1931?

A. My answer is the same, sir.

Q. You have no recollection of ever having met him except in 1923 and 1926?

A. I cannot answer that. That is not what I have said.

Q. Well, you say it again; I will take your answer.

[fol. 3731] A. My answer is the same as in the record.

Q. Now, yesterday I asked you a question about the Hazel-Atlas matter, and my question was, page 2434:

"Q. After you became connected with Owens you were interested in an effort to get Hazel-Atlas to come in and pay royalties?

"A. I was interested in getting everyone to pay royalties so I could participate in some portion of it."

I now direct your attention to Government's Exhibit 777 which you produced this morning, and I show you the last paragraph, in which you say:

"I am concerned about and feel that our income from royalty will continue to decline. I am not at all optimistic as to the outcome of the Hartford-Empire Company's litigation."

In other words, on January 20, 1931, you were familiar with the problems relating to the Hartford litigation?

A. Generally, yes, sir.

Q. And you knew, did you not, at that time, that Hartford, in the litigation against Hazel-Atlas in Pittsburgh had resulted in a decision against Hartford in the first instance before Judge Gibson?

A. Not specifically, but generally I knew that.

Q. You knew, did you not, that there were certain licensees of Hartford, and more specifically Capstan, and Federal Glass, who were taking the position that in view of that decision they were not going to pay royalties, or, in the alternative, pay the royalties in escrow?

[fol. 3732] A. I didn't know that specifically but I knew that was the general feeling of all licensees.

Q. Did you make any suggestion as to how to work the matter out in view of that particular attitude, as you said, of all licensees?

A. Probably made a number of suggestions.

Q. Do you remember any of them?

A. If you will refresh my recollection I will try.

Q. Do you remember any apart from refreshing your recollection? I am trying to exhaust your memory first.

A. Will you read the question?

(Question read.)

Q. What is your answer?

A. I think my answer is still the same, if you will refresh my recollection I will do my best.

Q. Don't you remember, or, rather, isn't it a fact you suggested a further effort be made to bring Hazel into the Hartford family, and that this could be done by Owens and Hartford giving Hazel a participation in the royalties collected, if Hazel will agree to pay royalties, the payment and the participation to be substantially equal?

A. Yes, sir.

Q. You made that suggestion?

A. Yes, sir.

Q. In 1930?

A. I don't know what day it was.

Q. Before the decision of the Circuit Court of Appeals?

A. I wouldn't tie them together. I know that was my idea.

[fol. 3733] Q. Didn't you also, in that connection, state that an announcement to that effect would influence the outsiders, such as the Miller users, so that they would give up the fight and come into the Hartford fold?

A. I don't recall the statement, but that was my opinion.

Q. You expressed your opinion, did you not?

A. Frequently.

Q. I mean in that connection?

A. Yes, sir.

Q. Didn't you also make the suggestion that Hazel's participation in that connection, if it came about, whereby they would get as much back as they paid, should be kept a secret?

A. I wouldn't be certain of that.

Q. Now, I show you Government's Exhibit 128, which is dated November 13, 1931, written by you to Mr. F. Goodwin Smith, and that is your signature on there, is it not?

A. Yes, sir.

Q. And you say, in the first paragraph:

"Mr. McNash spent the greater part of the day with me yesterday, and I had an opportunity to talk with him in considerable detail regarding the discussion we had in New York."

Does that refresh your recollection that shortly prior to November 13, which is two days after Armistice Day, you saw Mr. Goodwin Smith in New York in connection with the Hazel-Atlas matter?

A. No, sir.

[fol. 3734] Q. Isn't it a fact that at the conference you referred to in the first paragraph of your letter, the conference which you said you had with Mr. F. Goodwin Smith, a discussion, rather, in New York,—you told Mr. F. Goodwin Smith that Mr. McNash was considering coming under a Hartford license, but made as conditions: one, that Ball Brothers should come in; two, that if Hartford won there would be a question of damages which might be an obstacle; and thirdly, that the whole royalty schedule would have to be revised?

A. Mr. Isseks, I cannot specifically remember that, but that didn't differ from my thinking on it.

Q. I am sorry, I have a job to do, and I am asking you if that refreshes your recollection. Do you remember having a conference along that line with Mr. F. Goodwin Smith shortly prior to the date of the letter you wrote on November 13, 1931?

A. I don't remember.

Q. In that connection I now show you again the diary entry of November 11, 1931, by Mr. Herbert Knox Smith, Government's Exhibit 412, to which objection has been made and sustained, and direct your attention to paragraph "B", and ask you whether that refreshes your recollection in respect of the question I asked you a few minutes ago, namely, what you told Mr. F. Goodwin Smith what Mr. McNash told you?

A. No, sir.

Q. Now, you say in your letter, Government's Exhibit 128, dated November 13, 1931, the second paragraph:

[fol. 3735] "I have some very definite reactions to what he had to say which leads me to believe that a proper handling of the situation will permit his (being Mr. McNash) agreeing to go along on a basis that would be much better than the present basis if the outcome of the Philadelphia suit would be unfavorable to you. (Meaning Mr. F. Goodwin Smith.)"

Do you remember what that basis was you had in mind, which is not referred to anywhere else but in the letter, the

basis which would be more favorable, would be better than the present basis if the Philadelphia suit would go against Hartford?

A. I don't remember the basis that I referred to in this letter.

Q. See if the next paragraph helps you out in that connection:

"I am going to talk to Mr. Carter about this matter in detail and get his reaction to my discussion, and then I would like to talk with you. I am pretty much crowded for time during the next two or three weeks but I will be in New York on Monday, either November 23rd or November 30th, the date has not been definitely decided as yet. I could spend an hour with you after our Glass Container Association meeting, and in that time give you the thoughts that both Mr. Carter and myself have as a result of my long talk with Mr. McNash."

Does that help you?

A. No, I don't recall the circumstances.

[fol. 3736] Q. Don't recall the basis at all: don't recall the nature of the conversation?

A. If you can refresh my recollection I will do the best I can.

Q. That is what I have been trying to do. You wrote this about the new basis, I didn't. If I had any other piece of paper I would show it to you. You don't remember it?

A. No, sir.

Q. Now, I again show you Government's Exhibit 129, which is dated December 2, 1931, apparently shortly after the meeting you referred to that might take place, in Government's Exhibit 128, in which you say:

"It was a pleasure to see you (Mr. F. Goodwin Smith) in New York on Monday and talk with you and Herbert Knox Smith regarding the Hazel-Atlas situation, and other matters pertaining to the glass industry."

Do you remember the conversation referred to by you in that letter?

A. No, sir.

Mr. Isseks: Now, at this time I would like to have marked as Government's Exhibit 780, a telegram addressed to the witness by one E. F. Glacken, May 28, 1932.

Q. Mr. Levis, you were familiar, were you not, with the fact that the Circuit Court of Appeals for the Third Circuit, I believe on May 6, reversed the decision of Judge Gibson?

A. What year, sir?

Q. 1932?

A. Generally, yes, sir.

[fol. 3737] Q. You learned about it in the normal course of business?

A. Yes, sir.

Q. Who is the gentleman called E. F. Glacken?

A. He was an associate of our company in charge of the sales office in our eastern territory.

Q. Did he have any office in the company other than being a sales manager?

A. No, sir.

Q. Was he district sales manager?

A. I don't believe we even called him that.

Q. He was former president——

A. He had been president of Atlantic Bottle Company.

Q. Before your company acquired it?

A. Yes.

Q. When was that, approximately?

A. I don't remember exactly. We acquired the assets on January 20, 1931, as of October 31, 1930.

Q. And he became an employee thereafter?

A. I don't remember exactly. (After referring to paper.) Yes, sir.

Mr. Isseks: Your Honor, this document has been stipulated as genuine by Owens-Illinois, at page 22, and I offer it in evidence.

The Court: It may be admitted.

(Government's Exhibit 780 read by Mr. Kramer.)

[fol. 3738] Q. Mr. Levis, there is some handwriting on this original document. Can you identify it?

A. I can identify Mr. Carter's initials.

Q. What about the handwriting on the bottom?

A. I don't know that.

Q. It does not look like anybody's that you recognize?

A. No. The E. F. G. might be Glacken, and the F. G. S. might be Smith.

Q. But you don't recognize the handwriting?

A. No.

Q. Did you receive that telegram in the regular course of business?

A. Yes.

Q. And turned it over to Carter?

A. I don't know what I did with it, sir.

Q. But you received it?

A. Yes.

Q. Did you participate in the negotiations that were had by Hartford-Owens and Hazel Atlas which resulted in the agreements dated July 1, 1932?

A. Yes.

Q. Anybody else of your company participate?

A. Mr. Carter and I think Mr. Williams was our counsel in connection with it.

Q. Who participated in behalf of Hartford?

A. There were a number there. I know Goodwin Smith was one.

[fol. 3739] Q. Anybody else?

A. I think I remember seeing Mr. Falck there.

Q. Anybody else?

A. Colonel Brown.

Q. Anybody else, sir?

A. Mr. W. J. Belknap was their counsel.

Q. Anybody else?

A. I don't recall any others, but I would be glad to have my recollection refreshed.

Q. What about Hazel-Atlas?

A. Mr. McNash and I think Mr. Philbin was his counsel.

Q. Anybody else, sir?

A. No one else from Hazel-Atlas that I recall.

Q. Where were the conferences held, sir?

A. At the Biltmore Hotel in New York largely.

Q. Tell us what happened, your best recollection, the substance of them.

A. My recollection of it, as I have been advised by counsel and associates, that the Hazel-Atlas had a claim against the Owens Company for what might be a very substantial amount for royalties that the Owens Company might have owed to Hazel-Atlas Company for having made items on suction machines under which Hazel had an exclusive suction license granted to them.

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[fol. 3740] Q. Anything else?

A. Yes; it is a long story, if you want it.

Q. I want the story?

A. And that there was also some complication which I did not know the detail of that indicated that Hazel might have some right to that proportion of the royalties that Owens had received from Hartford under the '24 contract, because Hazel might have had some exclusive rights under feeder inventions as well as under suction inventions, and that was one of the matters that I was very eager to get out of the way. I could not see any future for this royalty income business in Owens' operations, and therefore I felt if we could get out of the way of that contingent liability and that if we could get a right to use the developments of Hartford and Hazel in our suction development without having to go through in the whole forming machine development, the same kind of litigation as it apparently had been thrust upon Hartford and Owens in the early years on the feeder, that we had Ball's right to their development for us to practice in suction under their contract that did not expire for another year,—that we could then go on and develop our own suction process; feeders were a very small portion of our operation, and we were not interested particularly in what happened to them, and I felt the price to get those by giving up our forty free feeders and giving up half of our Hartford income,—take one-third was a fair [fol. 3741] price for us to accomplish the overall transaction.

Q. Do you remember anything else, sir?

A. I remember a lot, sir, but not in answer to that question.

Q. I want to know what happened at the conferences you had with the Owens and Hazel-Atlas people. I want your complete memory exhausted, your present recollection.

A. I did the best that I knew and tried to carry that overall thought.

Q. Do you remember anything else?

A. Yes. I talked to everybody long and hard in that connection.

Q. Anything else, sir?

Mr. Middleton: I submit, Your Honor, there ought to be a question pending.

Q. I will put the question. Do you have any further recollection of what transpired at the conference with Hartford and Hazel-Atlas which finally resulted in July 1, 1932, agreements, of which there are eight in evidence, Government's Exhibits 142 to 149, inclusive?

Mr. Philbin: I object to the question as limited to only Hartford and Hazel, and does not include the contract between Owens and Hazel-Atlas Company.

Mr. Isseks: I mean all of the contracts.

The Court: It covers all exhibits, 142 to 149, inclusive.

Mr. Isseks: The witness understands it. I will ask the witness.

[fol. 3742] Q. You testified that,—I asked you who attended the conferences on behalf of Hartford, Owens and Hazel. You told me who you remembered. Then I asked you your present recollection of what transpired at the conferences relating to the various contracts, the group of contracts, one Hartford and Hazel, Hartford and Owens, Hazel and Owens. There are eight of them. They are all in evidence. Do you have any further recollection of the conversation that took place with these various gentlemen collectively or separately at the Biltmore Hotel in New York or elsewhere?

A. I could refresh my recollection if I had some papers, but I just can't sit here and remember something that happened in '32 that is as complicated as that, other than there was quite broad overall thinking of what we attempted to accomplish than to state that I did every conceivable act of trading to try to carry it out.

Q. I will show you some pieces of paper, but first I want your best recollection. Do you have any further recollection?

A. I have a lot of recollections.

Q. On this subject matter?

A. Yes.

Q. Tell us.

Mr. Middleton: I think it is obviously unfair.

The Court: He said now he has further recollection.

A. My recollections, sir, are predicated upon something to [fol. 3743] stimulate them.

Q. I will give you that opportunity. I want your recollection independently without any piece of paper.

A. My recollection independently is substantially what I stated.

Q. And no further until I show you a piece of paper?

A. That is right.

Q. At this time I show you Government's Exhibit 139, which purports to be a memorandum dated May 28th, 1932, written by you to Mr. Carter, with copies to Mr. Phillippe, Mr. McNerney, and it says, "Attached is a copy of the outline of the proposed contract that we discussed this morning. It is quite important that this matter be kept strictly confidential. The attached copy is in order that you might think about the matter and present any views you have that will assist in the negotiation." You wrote that, did you?

A. Yes.

Q. Let's take up the outline of proposed contract between H-E, O-I, and H-A. "(1) Hartford-Empire, Owens-Illinois, and Hazel-Atlas to have equal participation (one-third to each) in Hartford-Empire's divisible income." You talked about that?

A. Yes.

Q. In that connection did you make suggestion to these gentlemen at the conferences about sharing royalties—forget about royalties?

[fol. 3744] A. No.

Q. Then you say,—"(2) Hazel-Atlas to pay Hartford-Empire and Owens-Illinois $1,000,000 in cash." That was talked about?

A. That was one of the prerequisites of going into, to get that half million dollars.

Q. You wanted that half million dollars?

A. Sure.

Q. You insisted on it?

A. I would not have talked about it if that had not been part of it.

Q. That was in lieu of back royalties?

A. I don't care what it was. It was a half million dollars income for our company when we did not have much business and were in the peak of a depression.

Q. And Hazel-Atlas was a manufacturer in competition with your company in the manufacture of glassware, was it not?

A. Yes.

Q. As long as you got the money you didn't care where it came from?

A. That is not a fair statement.

Q. But your statement that you were willing to get that half million dollars is a fair statement?

A. Yes.

Q. "(3) Hartford-Empire to have a divisible license in all feeder and forming machines, inventions of Owens-Illinois and of Hazel-Atlas"?

A. How about four?

[fol. 3745] Q. I am coming to that. No. 3 was discussed?

A. Yes.

Q. "(4) Owens-Illinois and Hazel-Atlas to pay to Hartford-Empire feeder royalties at Hartford-Empire's standard royalty rates". That was discussed?

A. Yes.

Q. "(5) Hartford-Empire's divisible income is to be its total income from feeder and forming machines in excess of $850,000 per year". That was discussed?

A. Yes.

Q. You knew that was approximately how much the royalties were?

A. No, I don't believe I did.

Q. You knew at that time you were getting more than you were paying under the fifty-fifty arrangement?

A. Oh, yes.

Q. And you calculated, did you not, based on royalties coming in from Hazel-Atlas and possibly others, you would still be getting more than you were paying?

A. I felt we were entitled to it. We contributed lots of inventions.

Q. My question is, you calculated you would still be getting more than you were paying?

A. I knew it would be more.

Q. Yes, thank you. "(6) Each party releases the others for all past infringements of its feeder and forming machine patents". You talked about that?

A. That was the big important thing.

[fol. 3746] Q. The royalties were not important?

A. They were important to our income; not to what I was trying to ultimately carry out.

Q. And the half million dollars was important, too, that you mentioned?

A. Very.

Q. Thank you, sir. "(7) Recoveries for patent infringe-

ment back of this date to be divided between Hartford-Empire and Owens-Illinois." What did that mean, sir?

A. That meant that we had stood our proportion of the legal expenses to bring these infringements and Hazel-Atlas had not, and we were entitled to more than Hazel was.

Q. "(8) Hartford-Empire to pay all future litigation expenses (which are not to be deducted from divisible income) and Hartford-Empire to retain all recoveries for future infringements (which are not to be added to divisible income)." That was talked about, too?

A. Yes.

Q. "(9) Owens-Illinois have no free feeders." That was talked about?

A. That is right.

Q. "(10) Hazel-Atlas not to pay royalty on stationary plug feeders, provided those feeders are outside of the patents of Hartford-Empire, Owens-Illinois, and Hazel-Atlas. In case of dispute on this point, it shall be submitted to arbitration." That was a matter that was something that was talked about at great length, was it not?

[fol. 3747] A. It was something that was talked about a lot afterwards because I thought at the time nobody realized what they were doing.

Q. "(11) Nothing to be paid under Hartford-Empire or Owens-Illinois patents on Lynch machines which Hazel-Atlas has." That was talked about?

A. That didn't affect us. I don't remember.

Q. That was the memorandum you wrote. You knew about it?

A. I had a whole list of the things that were discussed and I put them up to my associates, so they likewise would be familiar with them. I don't think those are my words. I wrote it as a report.

Q. "(12) Owens-Illinois and Hazel-Atlas have right to obtain Hartford-Empire machinery at Hartford-Empire's regular rate." That was talked about?

A. Yes.

Q. "(13) Terms of Owens-Illinois and Hazel-Atlas license agreements with Hartford-Empire to be the same." That was talked about?

A. Yes. That was what they always insisted upon.

Q. Who insisted?

A. Hazel.

Q. "(14) Agreements to expire January, 1945." That was talked about?

A. Yes.

Q. Then attached to that piece of paper you have, "Matters to be Considered Further". Then you say, "Applying to both Owens-Illinois and Hazel-Atlas contract. (1) Ex-
[fol. 3748] clusive or non-exclusive rights to Hartford-Empire in Owens-Illinois and Hazel-Atlas patents." Was that finally worked out?

A. Yes. They got a right to our developments.

Q. "(2) Status after January 1, 1945. Free license or not." What happened to that?

A. Well, the contract terminated in '45, and then I guess it depended on whether or not you were subject to infringement. Nothing happened after that.

Q. You say, "Matters to be Considered Further". Did you take that Item 2 up with the Hartford people and the Hazel-Atlas people?

A. No. This is a memorandum to my people.

Q. Well, a memorandum of what things should be considered further?

A. Things that I believed were going to be further considered, and I wanted to get Mr. McNerney's and Mr. Carter's opinion on it.

Q. You did not talk to the Hartford people on it?

A. Those are the things that were talked about. This is my interpretation of this discussion. I wanted it submitted to people who knew more about it than I did to find out if they could give me any new trading ideas to use in the deal.

Q. Did you talk with any of the people about this?

A. Probably.

Q. What did they say?

A. I could not say.

[fol. 3749] Q. You don't have any recollection at all?

A. No.

Q. "(3) Subsidiaries to join in contracts." That was done, was it not?

A. Yes.

Q. Then it says, "(4) Whitall-Tatum option, Tucker, Reeves & Beatty licenses, Miller licenses." What happened in connection with those matters in the conferences?

A. I don't remember much about the Tucker, Reeves &

Beatty license or the Miller license, but I heard Mr. Belknap testify yesterday about them and he knew all about them, and I would stand by what he said.

Q. What about the Whitall-Tatum option—was Mr. Belknap in those conferences too?

A. No. He handled the Tucker, Reeves & Beatty licenses.

Q. I am talking about the conferences with Hazel-Atlas representatives and Owens representatives, and Hartford-Empire's representatives, which finally culminated in the contracts. What happened about the Whitall-Tatum option?

A. The question was whether or not Hazel would pay anything towards it.

Q. Your best recollection,—you wrote it?

A. I wrote it as a number of items that occurred to me as being possible of discussion in this negotiation to get from people who knew more about it than I did their idea.

[fol. 3750] Q. What did you have in mind when you put it down?

A. I don't know.

Q. Thank you. "(5) Joint purchase of outside rights. (Old Section 21)" Was that discussed?

A. It probably was, sir, but I don't recall. I don't know what Section 21 means. It might be 21 of the 1924 contract.

Q. That is what it was.

A. I never read the 1924 contract. I would probably ask Mr. Carter about it.

Q. What is your present recollection of why you put down Item 5 under matters to be considered further?

A. I put it down so Mr. Carter and Mr. McNerney, who knew more about it than I did, would consider it and give me their points of view.

Q. "(6) Excluded fields of ware." What about that?

A. We wanted the right to make everything. We didn't want anything excluded.

Q. Did you talk about it?

A. Oh, yes.

Q. The Hartford people, what did they say?

A. I think we got it.

Q. Did you get the so-called Corning field too?

A. We never were interested in that.

Q. At no time?

A. Not that I know of.

Q. You were not interested in making insulators?

A. We were not interested in making them out of hard [fol. 3751] glass, but the Telephone Company was, and asked us to make them.

Q. "(7) Hartford-Empire contracts to be mentioned in Section 1-c." That is a detail. "(8) Time limitations or surrender by Owens-Illinois and Hazel-Atlas." What did you have in mind by that, sir?

A. I don't remember.

Q. "(9) Does Hartford-Empire stand expense of litigation on Owens-Illinois and Hazel-Atlas patents?"

A. I think we wanted to know whether that was——

Q. Did you find out, sir,—what was the final arrangement?

A. I don't remember. It is in the contract.

Q. "(10) Definition of feeders." That was a detail?

A. It was not a detail to us because we were in the suction development business and we wanted to know what was suction and what was a feeder.

Q. Did you work it out?

A. That was one of the most important points.

Q. Did you work it out?

A. Yes.

Q. "(11) Have all signers of the 1924 Owens-Hartford agreement joined in cancelling it?" Was that a detail or important matter?

A. I think it was very important.

Q. "(12) Rates of bulb royalty, Section 1-d." What did that relate to?

A. I don't know.

Q. "(13) Prepare sample machine license as provided [fol. 3752] for in last paragraph of Section 3." "(14) Complete all schedules," "(15) Old Section 30—Waiver of subsidiaries' exclusive rights." Those were details, were they not?

A. I don't know.

Q. "Applying to Hazel-Atlas contract only."——

A. May I go a little slower than that, sir?

Q. You can go as slow as you want to. I want to get your recollection of this memorandum as you read it at this time.

A. Thank you.

Q. "(1) Procedure re settling pending suits." "(2) Recitation of Million Dollar License Fee. Pro rated among machines."

A. The procedure of the settling of the pending suit, I

know we talked about that because it seemed important.

Q. During those negotiations Hazel-Atlas had intimated they might petition for a writ of certiorari, had they not,—do you remember that?

A. No, I don't think that entered into the negotiations until they made up their minds they were going through with the license.

Q. In other words, they decided to settle first?

A. Yes.

Q. Then, "(2) Recitation of $1,000,000 License Fee. Pro rated among machines." Was that talked about?

A. I don't get that one.

Q. It says million dollar license fee. Was that that mil-
[fol. 3753] lion dollars that you said you were anxious to get a half million of, or was it a different million dollars?

A. This must be an application of matters with Hartford that applies to Hazel-Atlas contracts only; something that Owens did not have anything to do with.

Q. But it is the same million dollars which you got a half-million dollars of?

A. It may be something between Hazel and Hartford.

Q. Except insofar as you got half of it?

A. I mean this memorandum. This provision of the memorandum related only to matters to be considered further and applying to Hazel-Atlas contract only, and I presume inasmuch as the million dollars is mentioned there it is Hazel-Atlas contract with Hartford only.

Q. "(3) Present Hazel-Atlas-Lynch machines free from Hartford-Empire and Owens-Illinois patents.

A. That was something Hazel were talking about.

Q. But it related to Owens-Illinois patents?

A. Hartford were handling our patents.

Q. "(4) Title to Hazel-Atlas machines. Right to purchase." Was that discussed?

A. We had the title to ours. That was between Hazel and Hartford.

Q. You had the title to all your machines, all the feeder machines?

A. We did up to the '35 contracts, as I recall it.

Q. At all times on all feeders you took from Hartford?
[fol. 3754] A. I don't know. Maybe our counsel could——

Q. I want your recollection. It is very fascinating to me. Did you have title to all the feeders you had in the various Owens' plants at that time?

A. Not now.

Q. I am talking about then.

A. Yes, that is my recollection.

Q. There was a discussion in these conferences as to whether Hazel-Atlas would keep title to these machines?

A. They wanted to be on an equal basis with us.

Q. You feel clearly in your mind your company had title?

A. It is not clear in my mind. I was not an expert on that phase of it. My recollection is I thought we had title, but I may be wrong.

Q. "(5) Limit on extent of use of stationary plug feeder." Was that discussed.

A. It was between them. As I testified a few minutes ago, it was not very thoroughly discussed.

Q. "Applying to Owens-Hartford only. (1) Division of past damages." Was that discussed between Owens and Hartford?

A. Yes.

Q. "(2) Consolidate existing contracts between Hartford-Empire and Illinois, Berney-Bond, et cetera." Was that discussed?

A. Yes. We felt there ought to be just one new contract.

[fol. 3755] Q. I am going back to Item 12 under 1, applying to both Owens-Illinois and Hazel-Atlas contract. "Rates of bulb royalty." What did that one relate to?

A. I don't know, sir. It shows there Schedule 1-d.

Q. Now, at various conferences was Mr. Carter present as representative of your patent legal department?

A. I would not say that he was there all the time, sir.

Q. He was there part of the time?

A. Yes.

Q. Do you remember Mr. Carter prepared a report which was submitted at the directors' meeting of your company shortly before the contracts were signed?

A. I recall the report. Yes, sir.

Q. Now, at the bottom Mr. Carter states in his report, which is Government's Exhibit 141, and I will hand you a copy so you can follow with me,—I direct your attention to the bottom of page 8. He says, "However, Hazel-Atlas' initial payment of $1,000,000 cash is first to be equally divided between Hartford and Owens-Illinois. Furthermore, Hazel agrees to pay royalties hereafter on its entire production of ware on feeders involving licensed inventions,

which is expected to so increase Hartford's divisible income that our net will remain unreduced by reason of the change from a one-half split to a one-third split." That is in accordance with your recollection what the calculation was, was it not, namely, that you were going to get more than you paid?

[fol. 3756] A. We always did get more than we paid. We only operated a little portion on feeders. If we would have operated at all on feeders and paid a royalty on suction we would have gotten a lot less than we paid.

Q. Then Mr. Carter says, "There is also reason for believing that the Miller Defense Association, and other present users of feeders which have not heretofore paid royalties to Hartford, may come in under Hartford licenses following Hazel-Atlas, in which case our one-third division of Hartford's net might become even larger than our present one-half." That was your expectation as well?

A. No, that was a selling argument to members of our Board who were not enthusiastic in doing this.

Q. Did you join in that selling argument?

A. I certainly did, and I was very happy when Mr. Carter tried to back me up.

Q. Did your expectations come through?

A. No.

Q. Didn't most of the Miller users come in?

A. Oh, you are talking about the Miller users?

Q. Yes.

A. I thought you were talking about our income being greater.

Q. We will take them up one at a time. Some of the Miller users came in?

A. Yes.

[fol. 3757] Q. Knox came in?

A. Yes.

Q. Maywood, et cetera, did they not?

A. Yes.

Q. And your expectation of getting more was not true; in other words, you did not get more by reason of the fact all these people coming in?

A. No. If we would have kept half and gone through to '45 and the Hazel-Atlas had to pay royalties, we would have gotten an awful lot, but I didn't think that was the way we wanted to run our business. I was willing to give up

our 40 free feeders, and I was willing to take one-third instead of half, and clean up these contingent liabilities and straighten out the right for us to develop our own suction machine because I believed that was the machine we wanted to use.

Q. Would you say for the year 1932 your net over what you paid was less than what it was in 1931?

A. I don't know. I can give you the figures. I carry them around in my pocket.

Q. You do?

A. Yes.

Q. Fine. I would like to have them. How much did you get in 1931, and how much did you pay to Hartford?

A. We received in 1931 according to this record $619,000.

Q. How much did you pay,—that was the net, you mean?

A. That was what we received.

Q. The net above what you paid?

[fol. 3758] A. No. We paid $338,000. In 1932 we received $509,000, and paid $323,000.

Q. What about 1933?

A. Beer came back then and we did not anticipate that and we received $747,000 and paid $560,000.

Q. What about 1934?

A. We received $954,000 and paid 569,000.

Q. Isn't it a fair statement to say that Mr. Carter's expectation, one-third division of Hartford's net, might become even larger than your present one-half except for the first year before you got Knox and all these people in. In '31 you received $619,000. In '32 you received 509,000, and in '33 you received 747,000, and in '34 you received 954,000?

A. Yes. In twenty-one years we received $13,000,000 and paid pretty near $8,000,000.

Q. You got a net of 5,000,000?

A. Yes. We paid $11,000,000 worth of development expense, and $1,200,000 of amortization of patents we owned, and $3,700,000 worth of legal expense.

Q. May we have that statement?

A. Certainly.

Q. I will mark it in evidence.

A. But I didn't think it was good business.

(The paper produced by the witness is marked Government's Exhibit 781.)

Q. You say Mr. Carter's expectations did not materialize?

A. Not net.

[fol. 3759] Q. But you thought it was a good selling talk to your directors?

A. No, I think I said Mr. Carter thought it was.

Q. Well, I believe you want to change it?

A. I don't care.

Q. Let's go down to page 9. Mr. Carter says, "As our present arrangements with Hartford have been carried on under the agreement of April 9, 1924, we have been contributing material amounts to Hartford's litigation expenses, in addition to undertaking to carry certain burdens of expense in the Patent Office, involving feeders and formers, amounting in all to $100,000 per year, or thereabouts. By the new agreement, of July 1, 1932, Owens discontinues any contribution to Hartford's legal expenses, and it is expected that the burden of incident Patent Office expense to this company will also be largely relieved, at a total yearly saving to us of from 65 to 75 thousand dollars, based on past experience. In case Hazel should cancel out of its Hartford license and our 1924 agreement with Hartford is restored (with certain amendments) as provided for in Section 2 of Contract No. 1, Hartford will continue to pay all litigation expenses. Hartford's initial deduction from royalty income becomes, in this event, $725,000, after which we continue to split fifty-fifty, but have no free unit rights." Do you remember that being the subject matter of discussion?

A. Yes.

[fol. 3760] Q. I will turn over to page 10. You have to turn two pages because there are two pages 9, under, "Owens-Illinois Release and License under Hartford Suction Inventions." Prior to this time did you have any suction rights from Hartford?

A. No.

Q. This was a new agreement in regard to suction, was it not?

A. That was the first time we had a right to practice their development unhampered by them, and as I recall it, we wanted this immunity from them, bringing infringement against us for some little gadget we might put on our suction machine that was on one of their developments, and we got in their contract a right to do it, and we had to pay

for it under arbitration, and we were given a credit memorandum for some six or seven hundred thousand dollars to apply against that.

Q. Anything else, sir, about that subject matter; I am going to direct your attention to Mr. Carter's memorandum. On page 10 he says, middle of the page, "As to these, there has heretofore been no agreement whatsoever between this company and Hartford—our general license agreement of April 9, 1924, being confined to feeders and formers, especially excluding the methods of and apparatus for raising glass by suction into molds, as in the Owens suction type machine." Then he goes on to state what the contract is, and I direct your attention to the next page, page 11, the [fol. 3761] second full paragraph, "This option, added to our free license and release under all suction inventions owned or controlled by Hartford up to July 1, 1932, is believed to put this company in a commanding position with respect to suction development and render it entirely unlikely that Hartford will branch out widely in the suction field, especially since every nonexclusive license coming to Owens-Illinois under this option may nevertheless be extended to our subsidiaries, to Hazel, and to Ball Brothers." Was that matter discussed, sir?

A. Yes. Mr. Carter did not state it right. There never were any suction developments by Hartford of any consequence. At least we have never learned of them to my knowledge. All we were doing was practicing the thought that we had, that a patent is not a thing that gives you any right to do something; it is a thing that keeps everybody else from doing what you are doing. What we wanted was the right to keep them from preventing us from making our own developments on our own machine. We were not trying to put them out of the suction field. We were trying to get—so we would have immunity on our own suction developments.

Q. You disagreed with Mr. Carter when he says——

A. Sure, he might have thought when he wrote this memorandum Hartford had some suction in the bag. If they have, Hartford had not pulled it out.

Q. You haven't got a piece of paper which explains your view in 1932, have you?

[fol. 3762] Mr. Middleton: I object.

A. No. But I can get one.

Q. Oh, you can?

A. Yes.

Q. We would like to have it?

A. Put that down, Mr. Middleton.

Q. Turn over to page 14.

A. I want to make it clear I don't agree with Mr. Carter because I know Mr. Carter thought the same as I did. I only say what Mr. Carter said in this report was not what Mr. Carter and I thought.

Q. He was reporting to the Board of Directors and he says here, "Is believed to put this company in a commanding position with respect to suction developments and render it entirely unlikely that Hartford will branch out widely in the suction field"?

A. It don't put us in command of the suction development, but I did not say it would be unlikely because there is nothing in the contract that would prohibit Hartford from developing a suction machine. They assumed this credit memorandum so that they could go ahead and have all kinds of suction developments, and we were offered them when they presented them to us at a price independent of Hartford.

Q. Did you ever pay any money for any Hartford suction rights?

A. They never had any.

Q. Did you ever pay any money for them?

A. No.

[fol. 3763] Mr. Isseks: Your Honor, the witness has indicated he would like to make a correction of a statement he made.

The Witness: I would like to correct the question of the title of the feeder. I understand that under the contract where we built the feeder, or where Hazel-Atlas built the feeder, they retained title to it and paid royalties the same as had they leased it; but where they leased the feeder from Hartford, Hartford continued to retain the title to the feeder.

Q. Look back at page 11, again, of the memorandum, Government's Exhibit 141. You have it in front of you, have you not?

A. Yes.

Q. Mr. Carter says—I am reading only to bring back your recollection—

"This option, added to our free license and release under all suction inventions owned or controlled by Hartford up to July 1, 1932, is believed to put this company in a commanding position with respect to suction developments and render it entirely unlikely that Hartford will branch out widely in the suction field."

I think your answer indicated you didn't agree entirely with it?

A. That is right.

I think your answer indicated you didn't agree entirely

Q. See if you agree with this statement made by Mr. Carter in Government's Exhibit 631, dated January 29, 1932, [fol. 3764] written by Henry W. Carter to Mr. F. Goodwin Smith, the second page, the second full paragraph, in which Mr. Carter says:

"for you will readily see, Goodwin, that the difficulties of our relationships in respect to this particular matter are inherent in our basic agreement. In recognizing your dominant interest in the feeder field, you will recall that we were very careful to insist on our own dominant position in the suction field, and I do not think I am giving away any secret when I say that the interests which control this company, both those which were originally attached to the old Owens organization, and those which have come into control through the Illinois-Glass merger, are still decidedly jealous of anything that looks towards an invasion of this field by others, including yourselves."

Do you agree with that statement made by Mr. Carter?

A. If it would not be Hartford it would be anybody who would come into operation.

Q. Wasn't that one of the reasons why you asked Hartford six months later, Government's Exhibit 631, for rights in the suction field?

A. We always wanted them. We asked them for them in '24.

Q. You asked——

A. We always wanted the suction rights.

Q. You say Owens asked for them in '24?

A. I think so.

[fol. 3765] Q. That is hearsay on your part, but I will take it.

A. Yes, sir.

Q. And they turned you down?

A. We didn't have them.

Q. Now, going back to page 14 of Government's Exhibit 141, at the bottom of the page:

"Hazel has expressed the fear that Owens-Illinois may go entirely to suction and thus cease to contribute to Hartford's divisible income while still getting its split of the fund to which Hazel might be largely contributing."

Did Mr. Carter correctly note what transpired in the meeting between you gentlemen in that respect?

A. Oh, yes, Hazel were always afraid we would get off the feeder, because they believed we believed the suction was better.

Q. Then it goes on:

"By Section 1 of this contract No. 6, Owens-Illinois meets this apprehension on the part of Hazel by what in effect is an agreement that as long as both Hazel and Owens-Illinois remain under general license from Hartford, Owens-Illinois will not reduce the proportion of ware made by Owens-Illinois and its subsidiaries on feeders embodying licensed inventions, below a certain percent, based on calculated royalties at Hartford's lowest rate. If it does so, Owens-Illinois agrees to pay direct to Hazel, one-third of the amount [fol. 3766] which would otherwise have been due to Hartford on the deficiency. The exact percentage which Owens agrees not to go below still remains to be filled in at this writing, by agreement between Mr. McNash and Mr. Levis. It will probably be something about 15%."

Does Mr. Carter's statement in that respect conform to your recollection?

A. Yes, sir, we paid it to Hazel; we had nothing to do with Hartford.

Q. You did, in fact, never go below that figure?

A. We never produced less than that amount before we cancelled the contract.

Q. You always kept above the 15%?

A. We always produced more than that.

Q. Then Mr. Carter says, page 15, second full paragraph:

"We regard this assurance as perhaps the most onerous feature of this series of contracts, insofar as Owens-Illinois is concerned, but understand that it was necessary in order to secure Hazel's final agreement to these contracts."

Did Mr. Carter state your view also?

A. I think it was moot question, because we were buying the Illinois-Pacific Coast Company then and they were feeder-operated, and I knew they would not change to suction, because it was too technical a development, and I presumed we would always be above that percentage.

Q. When Mr. Carter says, "We regard this assurance as [fol. 3767] perhaps "the most onerous feature of this series on contracts" he is not setting forth your views, but his and somebody else's?

A. Generally the views of the management. It wasn't any more my idea than Mr. Phillipps' or Mr. McNerneys's, or others'.

Q. They thought it was Owen's? I am trying to find out who Mr. Carter means by "we".

A. You will have to ask Mr. Carter. It is his memorandum to our board of directors, all of which is a discussion of a contract that was finally entered into, and this was the selling argument to our board on various clauses. Contracts were presented to the board, anyone had the right to read them, the contract speaks for these things, not the memorandum.

Q. I understand, but the memorandum states the reasons why the writer thought the agreement should be made, does it not?

A. Yes, sir.

Q. Going to page 16, one more question:

"General advantages to Owens-Illinois. This brings us to the reasons for the concessions made by this company to both Hartford and Hazel in these agreements. It is our opinion that on the whole our situation will more likely be improved by our entering into them. Contracts 4 and 8, being separate supplemental agreements between Hartford-[fol. 3768] Empire and Owens-Illinois "Glass Company, and between Hartford-Empire and Hazel-Atlas Glass Company, are designed to take care of the contingency that by some outside influence or decree, governmental or otherwise, Owens-Illinois in the one case, or Hazel in the other, should be unintentionally deprived of its right to participate in Hartford's net. In effect, these supplemental agreements provide that under the assumed contingency, Hartford and Hazel, or either of them, may continue to use feeders and formers involving Hartford's licensed inventions without

payment of royalties other than certain minimum royalty which shall not exceed $1,500 per year per feeder or $500 per year per former."

Mr. Carter states your recollection of the reasons for the supplemental agreements?

A. No, that was something the lawyers talked about. I wasn't interested in it. We had some lawyers on the board, probably somebody thought they would ask the question about that and Mr. Carter, who is a lawyer, put it in.

Q. Did you ask what he meant by "by some outside influence or decree, governmental or otherwise"?

A. No, sir.

Q. Were you interested in what he meant by "governmental"?

A. No.

Q. Were you interested in finding out whether he meant the United States of America?

[fol. 3769] Mr. Middleton: I object.

Mr. Isseks: If he knows, Your Honor.

The Court: If he knows he may answer.

The Witness: No, sir.

Q. I am all through with it. I want to go back to this Illinois Glass Company. That company, between 1929 and 1938, when it was dissolved, had stock in various companies, I think you said it was an investment trust for the glassware industry; is that the word you used?

A. Yes, sir.

Q. What companies did that Illinois-Glass Company have stocks in, if you know?

A. I will do my best to guess, it would not be all inclusive.

Q. I mean glassware companies, not non-glassware companies.

A. Well, Libbey-Owens-Ford, Kimble Glass Company, Hazel-Atlas, Anchor-Hocking, Thatcher.

Mr. Middleton: May we ask that the time be fixed?

Mr. Isseks: I fixed the time between 1929 and 1938.

The Witness: The Owens-Illinois Glass Company.

Q. I would like to go a little slow. Owens-Illinois was the glass container glassware field, generally, during that period, was it not?

A. It was in the glass container field, and the tableware field,—that is, paste mold tableware, and the pressed glass

field,—such as insulators and glass brick,—and in the metal container field and the paper container field.

Q. But its line in the container field was general, it had [fol. 3770] the right to manufacture everything under the Hartford license?

A. Well, we don't care whether we had the right under Hartford. We could make it under suction, if we couldn't make it under that.

Q. That is right. You manufactured everything?

A. Yes.

Q. You were president during most of the period?

A. I was president between January 14, 1930, and January 17, 1941.

Q. In other words, while Illinois Glass consolidated, or Illinois Glass Company, whatever its name was,——

A. I think it would be desirable to call it Illinois Glass Company, with the understanding it may have had some other corporate designation during that period.

Q. Then I will call it that from now on.

A. The same corporate structure.

Q. How many stockholders did that company have, approximately?

A. About 135.

Q. Were they principally members of your family?

A. No, sir, in number there were very few members of my family. In number of shares, they were largely members of my family.

Q. But in number of shares they were?

A. Yes.

Q. Now I direct your attention to the TNEC testimony which you gave, on page 478, and see if that doesn't refresh your recollection that you testified at that time that [fol. 3771] they were practically all members of your family, with some employees.

A. The way the record reads: "There were 135 stockholders. They were practically all members of my family or employees of the company."

Q. And that is a correct answer?

A. That is right.

Q. Now, my associate, was not then but he is now,—Mr. Cox,—asked you whether you had any objection at that time to referring to the group as the "Levis group", and you said no. Do you have any objection now?

A. Yes, sir, because Mr. Cox took advantage of that. We only tried to designate that for the purpose of convenience. That was not the Levis group, but the shareholders of the Illinois Glass Company.

Q. You prefer not to call it the "Levis group", and I won't call it that. That company, you said, had stock interests, 135 stockholders, members of your family and the employees of Owens-Illinois Glass Company?

A. You will have to set a date. We might have had a few shares of stock, by 1933 we had senior securities of Owens-Illinois.

Q. From '33 on you had shares of stock?

A. That is right. I will give you the date if you want it.

Q. I will be glad to have it.

A. May 9, 1933.

Q. Now, Anchor-Hocking at that time, Hocking prior to 1938, that was a manufacturer of what?

A. Pressed tableware.

[fol. 3772] Q. You said this company had stock in Hazel-Atlas?

A. Illinois Glass Company, yes, sir.

Q. I would like to go back. What was the largest number of shares, percentage-wise, that Illinois Glass Company had in Owens, let's say, at the peak?

A. Not to exceed 20% is my best recollection.

Q. About what period of time was that?

A. Well, from the time we took the shares, May 9, 1933, until the dissolution in——

Q. '38?

A. '38.

Q. Now, what was the maximum that Illinois-Glass had in Hazel-Atlas at any period of time?

A. I think I testified at the TNEC hearing, never to exceed more than 22,500 shares out of 434,000 shares; at the time of dissolution, 20,000 shares.

Q. Now, what about Thatcher Manufacturing Company, the maximum?

A. Well, it would be less than 10% owned by Illinois Glass Company.

Q. That is what I am asking about.

A. The figures are in the TNEC hearing, which I am glad to stand on, if you want to read them into the record.

Q. No, there is a little conflict of rules of evidence on that. What about Anchor-Hocking, or Hocking? Do you

want to take them separate, first Anchor and then Anchor-Hocking?

A. Well, in the Hocking, Illinois Glass Company's hold-
[fol. 3773] ing was 12½%, which was arrived at by three interests owning 90,000 shares, and they issuing another 20,000 shares for cash to Illinois Glass Company and one other purchaser, who divided that purchase, so that we each owned 12½%.

Q. You mean the Illinois Glass Company group?

A. The Illinois Glass Company Corporation owned 12½%, and another shareholder bought, at the same time, 12½%.

Q. A shareholder of Owens-Illinois Glass?

A. He did happen to hold some shares in Illinois Glass.

Q. Who was that gentleman?

A. Allied Chemical & Dye.

Q. Was there any change when Hocking became Anchor-Hocking, in percentage?

A. It would be very much diluted, because Hocking got less than half of Anchor-Hocking, therefore we would have less than a half of 12½%.

Q. The answer of Owens-Illinois is the percentage that Illinois Glass Company had of Owens, at apparently the date of dissolution, as 16.8 of Owens; 5.7 of Hazel, 3.3 of Lynch, 6.8 of Thatcher, and 6.7 of Anchor-Hocking? You have no reason to doubt those figures?

A. No, I know our office prepared those for the answer.

Q. As a matter of fact, those were as of date of highest holding?

A. No, I don't think the Owens holding was 20%. That 16% was after we had diluted our shares by purchasing some assets of one of our shareholders, like one of our can
[fol. 3774] companies, or by offering shares to shareholders, some of which may not have been taken.

Q. Does the Illinois Glass Company have any senior securities in any of these companies?

A. Illinois Glass had senior securities in the Owens-Illinois up until the time of its conversion.

Q. Approximately how much?

A. Part of the purchase price, as I recollect, was $8,000,000 in preferred and $5,000,000 in debenture notes, 100 for the preferred, callable, at 110.

Q. Did it have any right to vote in default of the payment of dividends?

A. There were a lot of provisions; I haven't read them.

Q. They were converted later on?

A. Yes, sir.

Q. What about the other companies, did Illinois Glass have any senior securities in the other companies?

A. There were no senior securities in Hazel. I don't think they ever owned any in Anchor Hocking or Thatcher.

Q. Did this company, Illinois Glass Company, own securities in any company manufacturing glassware machinery?

A. Lynch.

Q. When was that?

A. Well, they took it sometime in the summer of '33, or fall of '33.

Q. How much?

A. 3,000 shares.

Q. Approximately how much in dollars, do you know?

[fol. 3775] A. $60,000.

Q. You were president of Owens-Illinois and Illinois Glass Company at the same time?

A. Yes, and both companies knew it.

Q. Who were the directors of Illinois Glass Company?

A. Mr. R. H. Levis, Mr. Charles Levis, my father, Mr. John M. Levis, my uncle, Mr. E. M. Ashcraft, Jr., our counsel, and myself.

Q. I would like to go back to the schedule you have carried around in your pocket. Have you been carrying that all along?

A. I testified in the TNEC hearing, which goes up to the last few years, and I carried that around in my pocket and added those few years, thinking you might want to see it.

Q. You testified these figures here were what you received from Hartford and what you paid to Hartford?

A. No. I didn't. I testified those were all the royalties that we received, and that our royalty business was a bad business, because we lost money. The caption on that didn't so record it. If you would like the Hartford figures, I can secure them.

Q. I think perhaps I misunderstood and perhaps the Court misunderstood. I got the impression the royalties on this schedule were what you received from Hartford.

A. Those are all the royalties received in 21 years.

Q. And the royalties paid were paid to everybody?

A. No, sir.

[fol. 3776] Q. So it is not a schedule of Hartford?

A. No, sir, it is a schedule recording our patent and licensing business. I wanted to get out because I thought it was unprofitable.

Q. Mr. Isseks: I think we might have the figures relating to Hartford and Owens, which the government is interested in, although this is interesting, and those are in the stipulation signed between Owens and the government, which has various schedules. I would like to offer the stipulation as one exhibit, just as we did in the Hartford stipulation. This stipulation is dated September 10, 1940; it has various schedules, five schedules. I won't bother to read them. There is no dispute about it, Mr. Middleton, that it is the original stipulation?

Mr. Middleton: No.

Mr. Isseks: I would like to have it marked as the next government's exhibit.

The Court: A schedule of royalties?

Mr. Isseks: Various schedules of royalties paid and received.

Mr. Middleton: There are several other items besides royalties in that stipulation.

Mr. Isseks: I am not referring to those at this time. You can refer to them if you wish to. I offer it in evidence as Government's Exhibit 782.

Mr. Middleton: You are offering the entire stipulation?

[fol. 3777] Mr. Isseks: Entire stipulation.

Mr. Middleton: That includes considerable information with respect to sales.

Mr. Isseks: May it be admitted, Your Honor?

The Court: Yes.

Mr. Isseks: Schedule 4 shows all the royalties received from Hartford for the period from 1920 to 1937, but no receipts for the years '36 and '37, and the total of all those years, beginning in 1924, that is $22,000, and ending in '35, at $750,000—the total figure is $4,800,000.

I would like to ask the witness a question.

Q. This schedule, which shows royalties received from Hartford, the last figure $750,000 from Hartford for the year 1935, I will ask you whether the two and a half million dollars received from Hartford on or about September 30th or October 1, 1935, is reflected as a royalty received?

A. It is perfectly obvious it is not. We couldn't receive

two and a half million dollars in a year in which we show $750,000.

Q. How did you reflect it in your books?

A. As patent rights sold, and so shown in our annual report to shareholders.

Q. It was not reflected as royalties received?

A. It never was a royalty received.

Q. The figures as to receipts by your company for the other years were figures put down as royalties received?

[fol. 3778] A. I didn't make the schedule.

Q. In any event, we agree the two and a half million dollars is not in here?

A. Sure it is not in here. Not in the figures I gave you, either.

Q. That is what I was going to ask you about. In other words, it is not on Exhibit 781?

A. No.

Q. So you would have to add, if someone were to assume the two and a half million dollars were royalties received, you would have to add it to the 4,000,000 shown on Exhibit 781?

A. Read the question.

Q. I will change the question. If you computed the amount received from Hartford, royalties or otherwise, from 1924 through 1935, you would have to add to this schedule, which shows 4,800,000, the royalties received of two and a half million?

A. You would have to add the Hazel-Atlaas half a million, and the Ball Brothers two hundred thousand.

Q. That is not included?

A. No, that is not royalty. If you reported it as royalty the S.E.C. would have us up on the carpet.

Q. In addition to the 4,800,000 you received from Hartford, the half million of the million Hazel-Atlas paid, the two hundred thousand Ball Brothers paid, was there any other proportion of liquidated damages received from any other licensee who came in?

A. We received that through Hartford, not from Hartford.

[fol. 3779] Q. Hartford was the conduit?

A. That was the contract, that we were to get half.

Q. Ball Brothers didn't negotiate with you for the payment of the 400,000, did they?

A. No. That was after the '32 contract when Hartford

had agreed to handle those things. We didn't pay any of the legal expenses.

Q. In any event, then, you agree you would have to compute the amounts received from Hartford, you would have to add three and a half million dollars both to Schedule 4 of the exhibit 782, and to the schedule which you have carried around in your pocket, Government's Exhibit 781?

A. Yes, and you would have to add to the other what we paid for things we bought.

Q. We will come to that. I am talking about moneys paid to Hartford and moneys received from Hartford, by way of royalties or otherwise.

A. You will have to change the caption on that schedule before it can be satisfactory, if that is what you are reading into the schedule.

Q. I am not reading anything in, I am trying to get information from you, that is all. Now, I would like to go to another place in this exhibit, which shows the amount of money, royalties paid.

Mr. Middleton: Commencing which page?

Mr. Isseks: Well, it says on the top, "Schedule of Royalties Paid". Hartford-Empire is the fourth column from the left.

[fol. 3780] During that same period they paid $2,880,000, except Your Honor will note no payments shown for '36 and '37, after Hartford ceased to pay, according to Schedule 4, any royalties to Owens, for the years '36 and '37. So that, if I might point out, if you take the figures up to September 30, 1935, you have to deduct $1,045,000.

Q. Now, Mr. Levis, you said, I think, yesterday, that your Uncle Harry—I may call him that, is that all right, "Uncle Harry"?——

A. Yes, sir.

Q. —— was the chairman of the board of directors of the Illinois Glass Company; and I believe there is an admission in the answer that he was a director and vice-president of Owens-Illinois Glass Company in '32—'29 to '34?

A. He discontinued being an officer of Owens at some earlier date.

Q. Perhaps so; whatever the answer shows.

A. Yes, whatever the answer shows is accurate.

Q. He was a director of Owens-Illinois?

A. Yes.

Q. And you wrote to him and to various officers of the Illinois Glass Company, and of Owens-Illinois Glass Company?

A. I wrote to him, with copies to my father and John Levis, Mr. Ashcraft, as directors of the Illinois Glass Company, reporting to them on these matters.

Q. Because of their interest?

A. Because they were directors.

[fol. 3781] Q. Were they directors of the Owens-Illinois Company?

A. Of the Illinois Company.

Q. Of the Owens-Illinois?

A. No, sir; only except Uncle Harry.

Mr. Isseks: At this time I offer in evidence as Government's Exhibit 783, a letter dated August 2, 1932, addressed to R. H. Levis, Illinois Consolidated Glass Company, Alton, Illinois, stipulated as genuine by the defendant, W. E. Levis.

Counsel for Hartford have questioned whether Exhibit 781 was admitted in evidence. My recollection is Your Honor admitted it. That is the schedule which the witness produced from his pocket.

The Court: I don't remember that. 780 was the last I admitted.

Mr. Isseks: I offer 781, Your Honor.

The Court: 781 is what?

Mr. Isseks: The schedule which the witness said he had in his pocket, of the Illinois Glass Company and subsidiaries.

The Court: Well, that may be admitted. What is 782?

Mr. Isseks: 782 is the stipulation dated September 10.

The Court: I have that.

Mr. Isseks: I now offer 783.

The Court: It may be admitted.

(Government's Exhibit 783 read by Mr. Lewis.)

[fol. 3782] Q. Mr. Levis, you wrote that letter, did you not?

A. Yes, sir.

Q. Who is the gentleman that you call "Edwin"?

A. Mr. E. M. Ashcraft, Jr., a member of the board of directors of the Illinois Glass Company.

Q. And also its counsel? Was he counsel for it, too?

A. Counsel prior to selling its assets.

Q. Who is Mr. McAdoo you refer to?

A. Mr. McAdoo is vice-president of Allied Chemical & Dye Corporation.

Q. And a director of your company, Owens-Illinois?

A. Yes, sir.

Q. You say in the third full paragraph, the last sentence: "We are negotiating with both of these companies" (referring to Ball Brothers and Root Glass Co.) Were you participating in the negotiations with Ball Brothers?

A. What date is that?

Q. Well, will you look at the letter: August 2, 1932. You see the last sentence in the third full paragraph?

A. I don't think I was negotiating with Ball Brothers at that time. I might have been trying to talk them into taking a Hartford license.

Q. And who did you talk to?

A. I talked to F. C. and G. A. Ball, and all the boys.

Q. You say, "We are negotiating with both of these companies". Did you negotiate with Root Glass Company?

A. Yes. Mr. Root was one of my close friends. I had [fol. 3783] dinner with him last night. I always negotiated with him.

Q. Did the Root Glass Company ever become a licensee of Hartford?

A. No, sir.

Q. What happened?

A. We bought them out in—I will give you the date—(referring to papers) bought them on September 16, 1932, as of July 31, 1932.

Q. About a month and a half after this letter, letter dated August 2, and you say September 16, that is a fair statement?

A. Yes.

Q. A month and 15 days.

A. I had been negotiating for three years with Mr. Root, so one or two days don't make any difference.

Q. You say, "We are negotiating with both of these companies. I am quite confident they will come in if all the other feeder operators come in."

A. Mr. Isseks, there is not anything mysterious about this letter or all of these other letters. It was a known fact I was president of the Illinois Glass Company, which was an investment trust, interested in glass companies; and I was

president of the Owens-Illinois Company, that was operating in the container field. The shareholders knew it, the Illinois shareholders and the Owens-Illinois shareholders, and the directors knew it. I didn't know there was anything wrong for me to take a board of directors of old men, who were satisfied in keeping their investment in senior securi-
[fol. 3784] ties, and writing to that board of directors any selling argument I wanted to write, to induce them to shift from a senior security investment to an equity investment, and I wrote dozens of those letters. I wrote letters regarding their investments, regarding every investment we made. If you will take the National Distillers, I had an awful time about touting that company and causing them to invest in that; and the Franklin Distillery investment. And there never was any one of those investments made by Illinois Glass Company without official offer to the Owens-Illinois Company board for them to either buy it, or after we bought it, to buy it, because there wasn't a single investment that was made of any number of shares that would have permitted us to place a director on the board of the company, and there wasn't a single thing I wrote to them that any other shareholder of those companies could not have gotten as a shareholder of the company had they applied to it for the information. There are dozens of these letters. I am perfectly willing to answer questions about all of them, and I will if asked about them, trying to distinguish between those things I did as president of that investment trust, who saw nothing illegal in making investments in securities they knew something about, and those things I did as president of the Owens-Illinois Company.

Q. To repeat my question, did you negotiate with the Root Glass Company in regard to their taking a feeder license?

[fol. 3785] A. I never did. I knew Mr. Root never would have taken one. It was a crusade with him.

Q. You said, "We are negotiating with both of these companies, and I am quite confident they will come in if all the other feeder operators come in." Was that true when you said it or wasn't it?

A. I said many things in those letters as selling arguments to directors of the Illinois Glass Company to get them to shift from a senior security holding policy to one of the purchase of equities, and I used arguments of all types to convince them.

Q. Were you negotiating or were you not negotiating with Root Glass Company?

A. I never did negotiate with Mr. Root to take a Hartford license, because I knew he wouldn't do it.

Q. But you bought him out?

A. I didn't buy him out.

Q. The company bought him out?

A. He sold out to the company. He lost his only son in a serious accident, and as a result of his mutual friends and ours, we took his business from him. We didn't buy it.

Q. You paid him for it?

A. Very little.

Q. You closed the plant?

A. No, we operated for a great many years.

Q. How many years?

A. We closed it in the depression of '38, I think.

[fol. 3786] Q. But you closed it down finally?

A. Yes, sir, but it is our one fully equipped plant, which will go into business if we get enough business to operate; it wasn't a shut-down plant.

Q. All right. Did you negotiate with Ball Brothers?

A. I did negotiate with Ball Brothers.

Q. And did you talk to them about taking a Hartford license?

A. No, I never negotiated with them on that. In 1932 I did talk to them about it.

Q. You were just giving a selling argument in those letters?

A. I was in all those letters to my uncle, my father, and Mr. Ashcraft.

Mr. Isseks: At this time I offer Government's Exhibit 784, letter written by the witness, dated September 2, 1932, addressed to Mr. H. E. Laupp, vice-president Dollar Savings & Trust Company, Wheeling, W. Va., signed by the witness, stipulated as to genuineness by Hazel-Atlas, at page 6 of the stipulation. I offer it in evidence.

The Court: It may be admitted.

(Government's Exhibit 784 read by Mr. Kramer.)

Q. Did you write that, sir?

A. Yes, sir.

Mr. Isseks: At this time I offer in evidence Government's Exhibit 785, letter dated September 9, 1932, addressed to

Mr. McNash, Hazel-Atlas Glass Company, signed by the witness, stipulated as genuine by the Hazel-Atlas at page 6 of the stipulation.

[fol. 3787] The Court: It may be admitted.

(Government's Exhibit 785 read by Mr. Lewis.)

Q. Did you write that letter, sir?
A. Yes, sir.

Mr. Isseks: At this time I offer as Government's Exhibit 786, letter dated September 12, 1932, in reply to the last exhibit, signed apparently by J. H. McNash, stipulated as genuine by Hazel-Atlas at page 6 of the stipulation.
The Court: It may be admitted.

(Government's Exhibit 786 read by Mr. Kramer.)

Q. You received that letter, Mr. Levis, in the regular course of business?
A. Yes, sir.

Q. Now, Mr. Levis, you were interested, were you not, in having become Hartford licensees, various manufacturers of glassware that were not licensees?
A. I didn't get the question.
Q. Were you interested in seeing that those manufacturers of glassware that were not licensees, became licensees of Hartford?
A. Yes, sir.
Mr. Isseks: At this time I offer as Government's Exhibit 787, letter dated September 10, 1932, addressed to Mr. H. C. Mandeville, signed F. Goodwin Smith, president, apparently on the stationery of Hartford-Empire Company, stipulated as genuine by Thatcher, page 10 of the stipulation.
[fol. 3788] The Court: It may be admitted.

(Government's Exhibit 787 read by Mr. Lewis.)

Q. You have the letter in front of you, sir; the Lamb Company was a manufacturer of milk bottles, was it not?
A. Yes, sir; still is.
Q. And the "Davis" referred to there was the Universal Glass Manufacturing Company, was it not?
A. I would presume so. I didn't know that company.
Q. Did you ever have the conversation referred to in this

letter by Mr. F. Goodwin Smith regarding the desirability of getting Universal and Lamb into the fold under restricted conditions?

A. I don't recall that specific conversation, but it was my desire to get them in.

Q. You would not dispute you had the conversation?

A. Oh, no, because I felt they had lost the patent suit and they were out of business because they didn't have enough money to pay the back damages, and I was very willing to keep them in business, and therefore suggested to Goodwin they be given a license.

Q. With a limit restriction on milk bottles?

A. No, the Lamb Glass Company had been taking it; it took a limited license.

Q. As to milk bottles the production was limited in the license?

A. I presume it was. I had nothing to do with the license.

Q. Well, in this letter Mr. F. Goodwin Smith said:

"I, of course, had in mind to call you up and give you the [fol. 3789] information, but Levis said he wanted to take the matter up with you anyways as you two might have a different picture, but now that you both approve, it seems advisable to lose no time, and we hope to be able to report definite accomplishments to you by the end of next week or the first of the week following."

Does that refresh your recollection?

A. I wasn't granting the license. I don't know whether it was limited or not.

Q. You had approved it?

A. I had approved it. I more than approved, I thought it was fine to keep the fellow in business and give him a license.

Q. But the restriction as to milk bottles was something you suggested in the first instance?

A. Not at all. Mr. Lamb didn't have to take a restricted license. Nobody held him up with a gun and said, "You have to take a restricted license." He asked for and got a restricted license and was perfectly happy with it.

Q. And you approved it?

A. I approved it, by entering into the contract.

Q. This was after Feb. 4, 1931, the date of the alleged cancellation agreement with regard to whether or not you had the right under Section 22 to veto?

A. They didn't have the right to veto it. You will find Goodwin Smith in other letters, you will find he talked to a lot of people about that. He testified he talked to most of [fol. 3790] the others about that.

Q. Were you here when he testified?

A. No, but I have read the record.

Q. You have read the record of the entire case?

A. As much as I have had time to.

The Court: We will now take the noon recess.

Mr. Isseks: The witness has asked to be excused this afternoon to attend a stockholders' meeting. The government is perfectly agreeable to that, and to have him return tomorrow morning.

(Noon recess.)

[fol. 3791] (At 2 o'clock p. m., Wednesday, April 16, 1941, the trial was resumed.)

The Court: Call your next witness.

Mr. Freed: May it please Your Honor, before calling the next witness, at this time, with the Court's permission, somewhat out of order, I should like to offer three documents into the record.

The first one, Government's Exhibit 788, is a telegram addressed to A. T. Safford, of Hartford-Empire Company, by George F. Collins, under date of July 11, 1934, and stipulated as genuine by Hartford-Empire at page 26.

The Court: It may be admitted.

(Government's Exhibit 788 read by Mr. Freed.)

Mr. Freed: I should likewise like to offer at this time, if the Court please, Government's Exhibit 789, a license and lease agreement between Hartford-Empire Company and Knape-Coleman Glass Company, dated April 29, 1935; and Government's Exhibit 790, which is a bill of sale from Knape-Coleman Glass Company to Hartford-Empire Company dated April 29, 1935.

Mr. Goodrich: May we have the privilege of withdrawing those so they may be photostated and substituting photostats?

Mr. Freed: Yes.

The Court: They may be admitted.

[fol. 3792] Thereupon the government called as a witness, WALKERMAN D. DUGAN, who, being first duly sworn, testified as follows:

Direct examination.

By Mr. Freed:

Q. Will you state your name, please?
A. Walkerman D. Dugan.
Q. What is your business?
A. President and general manager, Olean Glass Company.
Q. Where is that company located?
A. Olean, N. Y.
Q. What is the business of the Olean Glass Company?
A. We manufacture food container bottles and jars.
Q. How long have you been in that business?
A. Fourteen years.
Q. And connected with the same company during that time?
A. No; ten years with Olean.
Q. What is the connection between the Thatcher Manufacturing Company and the Olean Glass Company?
A. They are the parent company. Thatcher was the parent company of Olean.
Q. And is all of its stock owned by the Thatcher Manufacturing Company?
A. Yes.
Q. To what extent are the operations of Olean directed by the officers of Thatcher?
A. None.
Q. Do you receive any instructions or directions from Thatcher, whatever?
[fol. 3793] A. Only when it concerns some general policy of the whole company.
Q. In other words, the policies of Olean are directed by Thatcher, the office of Thatcher, or officers of Thatcher?
A. No, the policies of Olean have been directed by Olean.
Q. Who are the officers of Olean?
A. Besides myself as president and general manager there are H. C. Mandeville, vice-president.
Q. What office does he hold with Thatcher?
A. He is chairman of the board.

Q. Of Thatcher Manufacturing Company?

A. Yes. W. H. Mandeville is vice-president of Olean, and the same officer in Thatcher; and C. B. Baker is our secretary and holds the same office in Thatcher; and the treasurer is an Olean man, E. M. Westropp, with no title in Thatcher.

Q. Now, is Olean Glass Company a member of the Glass Container Association?

A. It is.

Q. How long has it been a member of that association?

A. Since 1931.

Q. And is a member of the association at the present time?

A. Yes.

Q. I assume, then, from May of 1935 to the present date it has been, and is now, a member of the Glass Container Association?

A. Yes.

Q. Now, during that period of time and including the [fol. 3794] present, what information, if any, does Olean supply to the Glass Container Association?

A. We supply these production records of our output each month, also the total gross of our sales each month.

Q. And what information, if any, does the Glass Container Association supply to Olean?

A. They supply us the general over-all statistical sheet which comprises the total volume of business done in the respective divisions, like the beer bottle and liquor business, food business; then it shows our relative position, percentagewise, with the industry figures as a whole; it also shows the increase or decrease of the business done for one month, two months, versus a year ago.

Q. And how often do you receive that information from the Glass Container Association?

A. Once a month.

Q. Now, did you have any occasion at any time, Mr. Dugan, to supply information to the Glass Container Association with reference to the prices at which you sell your product?

A. Never.

Q. You have never done that?

A. Never.

Q. Was there any occasion when they requested you for such information?

A. They don't request, they would ask, possibly at some meeting, as to what we were doing on some particular item, as, say, catsup bottles—they might say, what do we [fol. 3795] feel we would sell a catsup bottle for, and we would say what we would sell it for.

Q. Who would ask that and where would it be asked?

A. It has been asked when they stopped through to pay a visit, to call on us different times during the year, on an average possibly once a year.

Q. Who calls on you?

A. Mr. Ackerman or Hall.

Q. What is Ackerman's full name?

A. E. G. Ackerman.

Q. What position does he hold with the Glass Container Association?

A. He is not with them now, but up to January 1 he was general manager.

Q. At the present time he is employed with Thatcher, is he not?

A. Yes.

Q. What position does Mr. Hall hold with the Glass Container Association?

A. He was the head of the statistical department and now he has Ackerman's place.

Q. That was true during the time you have stated, from May, 1935, in the case of Mr. Ackerman, to January of this year?

A. That is right.

Q. And Mr. Hall was with the Container Association during that time?

A. Yes.

Q. You say Mr. Hall called on you on an average of about [fol. 3796] once a year, is that correct?

A. I would say yes, an average of once a year.

Q. What was the purpose of his trip on those occasions?

A. Just to get our information as to how we thought business was going, and about how our operations were coming, what machines we ran, and our general overall views as to what we thought was happening in the industry.

Q. During those visits was there any discussion on the subject-matter of prices?

A. Not to my knowledge. They might once in a while, as I mentioned, ask us what we intended to do.

Q. Was there any discussion as to what the rest of the industry was getting for the same article?

A. No, he didn't have to tell us that.

Q. He wouldn't have to tell you that?

A. No.

Q. You say they have never called on your company on any occasion concerning your prices, other than what you have described?

A. That is right.

Mr. Freed: At this time, if the Court please, I want to offer Government's Exhibit 791, which is a letter dated August 26, 1935, on the letterhead of Thatcher Manufacturing Company, addressed to Olean Glass Company, and signed by R. W. Niver. This is a letter which has been stipulated as genuine by Thatcher, on page 15 of the stipulation.

[fol. 3797] I likewise wish to offer Government's Exhibit 792, which is a reply to the letter of August 26, 1935, and this is dated August 27, 1935, addressed to Mr. R. W. Niver, president, Thatcher Manufacturing Company, signed by the witness.

The Court: They may be admitted.

Q. Now, I assume you received that letter, Government's Exhibit 791?

A. Yes, sir.

Q. And did you reply to that letter by Government's Exhibit 792?

A. Yes, sir.

(Mr. Freed thereupon read Government's Exhibits 791 and 792.)

Q. Now, I want to direct your attention to the paragraph in Government's Exhibit 791 which says:

"We have a letter from the Glass Container Association stating there have been rumors in New York to the effect that Olean Glass Company is committing themselves on three-year contract",

and then I want to direct your attention to your reply to that letter in which you say, at the top of the second page of the letter, the third paragraph of it:

"We are surprised that the Glass Container Association would question our judgment by going on record as checking these rumors."

Now, I am going to ask you whether or not, in addition to [fol. 3798] this occasion when they checked into the rumor as to the prices you were charging, whether the Glass Container Association on any other occasion questioned you?

Mr. Luther Day: I object. There is no foundation for that.

The Court: Yes, the objection will be sustained.

Q. Was there any occasion when the Glass Container Association did request you to furnish prices, or question you concerning the prices you were charging?

A. Never.

Q. On this occasion, however, you justified your prices to Thatcher?

A. Not the prices, the contract.

Mr. Luther Day: I want to object to that. I don't think that is a fair construction of the letter, and after all, it will speak for itself.

(Previous question and answer read.)

The Court: Do you still object?

Mr. Luther Day: I don't think I have to.

Q. Did the contract, which was the subject-matter of discussion, refer to prices that you were charging?

A. No.

Q. The contract did not refer to prices?

A. No.

Q. There was no reference in the contract to prices at which the articles were to be sold?

A. Not with reference to what he was writing about, no.

Mr. Freed: Now, at this time, if the Court please, I want [fol. 3799] to offer in evidence Government's Exhibit 793, which is a letter on the letterhead of Thatcher Manufacturing Company, dated June 3, 1936, addressed to Mr. R. W. Niver, president, Thatcher Manufacturing Company, and signed by the witness.

The Court: It may be admitted.

Mr. Luther Day: There is one statement in there, if Your Honor please, to the effect that the quota of the Gen-

eral Glass Company is around two to three hundred gross, or that the General Glass Company was around two to three hundred gross behind their quota. I want to object to that on behalf of the Glass Container Association on the general ground, and also on the ground there is no showing Mr. Dugan had any authority to bind or speak for the Association.

The Court: Well, that may be received for what it shows, as a statement made by Mr. Dugan, but the statements are not binding on the Glass Container Association, the statements of fact made there. Proceed.

(Mr. Freed thereupon read Government's Exhibit 793.)

Q. Now, I direct your attention to that part of your letter in which you say:

"It seems strange that they cannot get service at the General Glass when General Glass, according to statistics, is around two to three hundred gross behind their quota."

Where did you get the information as to the fact they were two to three hundred gross behind their quota?

A. The different companies would watch each other, that [fol. 3800] is, voluntarily, because General Glass is a competitor of ours, we know that they make the same type of ware that we do, generally speaking, and so we know—or knew—from their operations, the furnaces they were running, whether they were running to capacity or whether they were running under capacity.

Q. The question is, where did you get the information as to what the quota was of these two glass companies?

A. Well, that is what they used to take back in the NRA days.

Q. It was after the NRA days?

A. Yes.

Q. Where did you get the information, again, as to what the quota was of these two glass companies, as contained in your letter of June 1, 1936?

A. I never knew General Glass' quota.

Q. But you say in this letter they are two to three hundred gross behind their quota. Where did you get the information that they were two to three hundred gross behind their quota?

A. I would probably get that from one of their men that would tell me voluntarily.

Q. Well, who set that quota?

A. It was possibly set by the NRA code at that time.

Q. The NRA code was out of existence at this time, was it not?

A. But all the glass companies retained that information for themselves.

Q. Who gave you the information with reference to the [fol. 3801] quota after the NRA days.

A. That information was given out at different meetings.

Q. Whose meetings?

A. The Glass Container meetings.

Q. At the Association meetings?

A. That is right.

Q. Well, at the Association meetings you received the quota of each glass manufacturer, is that right?

A. That is right.

Q. And the Glass Container Association, in addition to giving you that quota at the various meetings, in their reports would indicate the quota of each glass manufacturer?

Mr. Luther Day: Just a minute. Is this gentleman a defendant?

Mr. Freed: The gentleman is not a defendant, but under Rule 43-B we have the right to cross-examine a hostile witness, if Your Honor please.

(Previous question read.)

A. All those glass manufacturers that were present at that meeting.

Q. You are a member of the Association, of course?

A. Yes, sir.

Q. And you received these monthly or quarterly reports from the Association?

A. Monthly.

Q. Monthly reports. And in those reports there was an indication of the amount of your output, was there not, of Olean Glass output?

[fol. 3802] A. Yes.

Q. And the total output?

A. That is right.

Q. And it shows the percentage of your output as compared to the total output?

A. That is right.

Q. And in addition to that there was the other figure

showing what your quota of the output ought to be, isn't that true?

Mr. Luther Day: I object to that. The document itself would be the best evidence.

The Court: I suspect if the document is in existence it ought to be produced.

Mr. Freed: We don't have that document.

Mr. Luther Day: I think Mr. Freed would probably agree with me the document received by this witness is the same as the document already offered in evidence when Mr. Underwood was on the stand, so probably there is no question what is in it.

The Court: I don't know whether there is or not.

Q. I am going to show you this document, marked Government's Exhibit 600, and in this there are three sets of figures, the industry forecast in 1935, a certain amount; your forecast in 1935; and your forecast percentage.

A. We got the same thing.

Q. Now, in addition to the percentage of your forecast, there was a percentage of your actual output, was there not?

[fol. 3803] A. It was the percentage of our actual output as figured that we should do for the size of tanks we had and the number of machines we had per tank.

Q. Now, on this particular exhibit there is an item of your forecast per cent to industry, 3.30, and your actual per cent to industry, 4.03?

A. That is right.

Q. Now, the reports that you received showed figures similar to these, showing the figures as to forecast per cent to industry and your actual per cent to industry?

A. For our own company, yes.

Q. And you received reports similar to this one, which is marked Government's Exhibit 600, monthly, from the Glass Container Association, is that correct?

A. That is right.

Q. Now, will you answer the question now, please, as to where you obtained the information with reference to the quota of General Glass Company?

A. When we get this sheet at these meetings—sometimes they mail these sheets to us and sometimes they have a glass meeting at the time these sheets are completed—then we would voluntarily, if we wanted to, interchange sheets, which most of us did.

Q. And this interchange of sheets occurred at the meetings?

A. Yes.

Q. And did you receive these sheets only at the meetings of the Association?

A. No.

[fol. 3804] Q. Well, they were mailed out, were they not?

A. They were mailed out when we were not going to have a meeting; and then when we had a meeting they were given to us.

Q. Then the information you received, as contained in this letter, you say you received at a meeting of the Glass Container Association by an exchange of your sheet with that of the General Glass Company; is that right?

A. I would say that is right.

Q. That is how you received the information?

A. I would say so.

Q. And not from the Glass Container Association?

A. That is right.

Q. Where was the meeting, with reference to this letter of June 1st, of the Glass Container Association, Mr. Dugan?

A. I imagine it might have been down at White Sulphur,—our semi-annual meeting in May that year was at White Sulphur Springs, in 1936.

Q. Did you ever receive such information from Mr. Ackerman of the Glass Container Association, as to the quota of any of your competitors?

A. No.

Q. You never received any such information?

A. The only information I would get from Ackerman would be if I wanted to check our operations, that is, the size of our furnace, number of our machines, as compared to another glass factory, or if I were interested in the volume of another glass factory.

[fol. 3805] Q. But you never received any information as to the quota from the Glass Container Association or from Mr. Ackerman, of your competitors, is that correct?

A. Well, that would depend on what you mean, as to any particular instance.

Q. The question is, did you ever receive information from Mr. Ackerman or the Glass Container Association with reference to the quota of any of your competitors?

A. On just one occasion.

Q. You did receive such information on one occasion?

A. This company wasn't a competitor. It was a company that we wanted to take over.

Q. And you received that information?

A. I asked Mr. Ackerman. I was checking over the records of this particular company and I asked him what information they had,—call it quota or volume,—that this company could produce for the size of his furnace, and for the number of machines that he had; and he told me.

Q. You called it "quota" in your correspondence?

A. Yes.

Q. And did Mr. Ackerman call it "quota" too?

A. Yes.

Mr. Luther Day: If there was correspondence, I suppose that would be the best evidence.

The Court: Yes, if that can be produced, it should be produced.

Mr. Freed: It will be produced, Your Honor.

[fols. 3806-3807] At this time I offer Government's Exhibit 794, on the letterhead, evidently, of the Olean Glass Company, of June 2, 1936, addressed to Mr. H. C. Mandeville at Elmira, New York, by the witness, and it is stipulated as genuine at page 19 of the Stipulation by Thatcher.

Mr. Luther Day: May I have the same record as we had as to 793?

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[fols. 3808-3809] The Court: Yes, I think the suggestion was made you would have such a memorandum.

I think I will overrule the motion on this. This witness was the author of the letter. What he says in the letter is not binding upon the Container Association as being the truth, but what might be elicited from him on examination is another matter.

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[fol. 3810] Q. Now, Mr. Dugan, I direct your attention to this sentence, 2-a in your letter, "Their quota is approximately 200,000 gross, which information I received from Mr. Ackerman, and for the first quarter, they were slightly under." When did you first receive that information from Mr. Ackerman?

A. After I made a survey of the company.

Q. Who did you receive that information from—Mr. Ackerman?

A. Called him on the telephone.

Q. And he gave you these figures on there——

Mr. Day: I object. I think we are entitled to conversation. You are putting into his mouth what the result of the conversation was. I think we are entitled to have this witness testify what he said and what Mr. Ackerman said.

The Court: I think he may question the witness the way he was questioning him.

Mr. Day: Very well.

Q. Are those the figures Mr. Ackerman gave you?

A. Yes.

Q. Did Mr. Ackerman tell you who set that quota?

A. No.

Mr. Day: I object to that. There is no evidence any quota was set.

The Court: It will be overruled.

Q. Where did you get the information that for the first quarter they were slightly under the quota?

A. From my survey of the company.

[fol. 3811] Q. From your survey of the company?

A. That is right, and their records.

Q. You got that information as to the quota from Mr. Ackerman?

A. That is right.

Q. You added those two bits of information together and come to this conclusion?

A. That is right.

Q. Now as a matter of fact, Mr. Dugan, the purpose of acquiring this Diamond Glass Company was so that your quota would be increased, isn't that true?

A. No. We wanted to extend our business in other markets.

Q. You say it is not true that one of the reasons for acquiring this Diamond Glass was so that your quota would be increased?

A. I would say no.

Q. You didn't have sufficient facilities then to increase your quota in your plant?

A. That is right.

Q. Couldn't you have increased your output with facilities that were then in existence?

A. No.

Q. Had it not been for the quota?

A. No.

Q. You could not?

A. No.

Mr. Freed: At this time I wish to offer in evidence Gov-
[fol. 3812] ernment's Exhibit 795, which is a letter dated April 25, 1938, on the letterhead of the Olean Glass Company, addressed to W. H. Mandeville, at Elmira, New York, and this letter is stipulated as genuine by Thatcher on page 23 of the Stipulation.

The Court: It may be admitted.

Thereupon, Government's Exhibit No. 795 was read to the Court by Mr. Kramer, of counsel for the government.

Q. Now, Mr. Dugan, in connection with this particular letter I want to direct your attention to a paragraph at the top of page 2 of the letter, in which you say, "I don't know whether I told you or not that at the Pittsburgh meeting the first part of February the boys were talking about increase in prices April 1st," and in connection with that statement of yours I am going to ask you the question who the boys were that you were discussing these matters with?

A. Other glass companies.

Q. What prices were you discussing with the boys of other glass companies?

A. No particular prices.

Q. Prices of what, of your products, weren't they?

A. Of our products.

Q. Will you name us the boys who were present at this meeting?

A. We had a number of those meetings and I could not definitely tell you everyone that was there.

[fol. 3813] Q. Give us some of them, the best that you can recollect, concerning which you were writing to Mr. Mandeville?

A. I would say the Brockway Glass Company would have a representative there.

Q. Who else?

A. Glenshaw Glass, Tygart Valley Glass, and possibly Hamilton would be there,—even though they were located in Pittsburgh they didn't always come. The same is true with Glenshaw, which is twenty miles from Pittsburgh.

Q. Who else?

A. Hazel-Atlas would invariably have someone coming up from Washington once in a while.

Q. I am talking about this meeting?

A. Once in a while an Owens man would stop in.

Q. An Owens man would stop in?

A. That wasn't always the case, but that was the rule.

Q. Would these prices be discussed at all of these meetings?

A. No.

Q. Were any other glass manufacturers there?

A. I would say—what is the date of the letter?

Mr. Day: April 25, 1938.

A. I would say possibly Anchor-Hocking would have a representative there.

Q. Was Anchor-Hocking there—who else?

A. I think that would be about all.

Q. Now I assume, Mr. Dugan, that all of these people—all the glass manufacturers were members of the Associa-
[fol. 3814] tion?

A. I could not say that.

Q. Was Owens a member of the Association?

A. I could not definitely say they are.

Q. Did you ever meet them at the Association meeting?

A. Yes.

Q. Did you meet a representative of Hazel-Atlas at the Association meeting?

A. Yes.

Q. And Glenshaw?

A. Yes.

Q. Which ones of those you mentioned didn't you meet at the Association meetings?

A. I would say I meet them all there.

Q. Then they are all members of the Association?

A. I could not say that.

Q. Do many glass manufacturers who are not members of the Association attend the meeting of the Glass Container's Association?

A. Olean Glass did before I came there.

Q. To your knowledge, while you attended the meetings, did any glass manufacturers attend the meeting of the Association who was not a member of the Association?

A. I would say no.

Mr. Freed: If the Court please, at this time I wish to offer in evidence Government's Exhibit 796, which is a letter on the letterhead of the Olean Glass Company dated July [fol. 3815] 13th, 1938, addressed to R. W. Niver, President of the Thatcher Manufacturing Company, by the witness, and the reply which is Exhibit 797, which is on the letterhead of Thatcher Maunfacturing Company addressed to Olean Glass Company under date of July 14, 1938, and both of these letters are stipulated as genuine on page 24 of Stipulations of Thatcher.

The Court: They may be admitted.

Thereupon, Government's Exhibit 796 was read to the Court by Mr. Freed, of counsel for the government.

Thereupon, Government's Exhibit 797 was read to the Court by Mr. Freed, of counsel for the government.

Q. Now, Mr. Dugan, showing you Government's Exhibit 796, which is a letter to Mr. Niver, you say in there that we will be within our production limits,—what do you mean by production limits?

A. All we can make.

Q. All you can make?

A. Yes.

Q. Regardless of quota?

A. That is right.

Q. In what way would you aggravate your competitors by manufacturing up to the limit of your production facilities; that is what you say in the first part of your letter, "After giving further consideration to what you say about aggravating your competitors by over-production we have decided not to request you—" now in what way would your competitors be aggravated by producing to the limit of your [fol. 3816] capacity of production?

A. We would take some business that we had not had which we would have to take from a competitor.

Q. Now, as a matter of fact, Mr. Dugan, isn't it the reference to your production limits and reference to your quota limits, the amount that you were allowed to manufacture?

A. No.

Q. So that all that this refers to then is that you would aggravate your competitors by producing to the limit of your capacity, is that correct?

Mr. Day: I want to object to that because this letter shows for itself what they are talking about was adding or acquiring an extra machine at Lockport.

Mr. Freed: I would like to get the witness' answer.

Mr. Day: Will you let the witness have it when you ask him that question?

Mr. Freed: Oh, sure.

A. This was in reference to taking on additional capacity by placing a machine of our ware in the Lockport factory.

Q. If that is the case, Mr. Dugan, why were you interested in acquiring the plant of the Diamond Glass Company in order to increase your production facilities, if you were shutting down your own facilities?

A. Because their kind of ware was entirely different than ours.

Q. Couldn't you manufacture their kind of ware on the [fol. 3817] same machines you had?

A. Yes, but it was a different sales policy.

Mr. Freed: That is all.

The Court: Anybody else want to ask him any questions?

Cross-examination.

By Mr. Day:

Q. Mr. Dugan, you are president of what company?

A. Olean Glass Company.

Q. That is a member and was for years a member of the Glass Containers' Association?

A. It wasn't a member prior to my coming there in 1931.

Q. But from 1931 it was a member and is now a member?

A. Yes.

Q. You are not an officer of the Association?

A. No.

Q. Were you ever an officer of the Association?

A. No.

Q. These letters that have been introduced in evidence by the government are letters exchanged between you and Mr. Niver. Now Mr. Niver appears to be the president of the Thatcher Manufacturing Company, and in some other

letters you write Mr. Mandeville. What was his connection with the Thatcher Company?

A. Chairman of the Board.

Q. First, what was the relation of your company to the Thatcher Company?

A. We are a subsidiary company.

[fol. 3818] Q. And wholly owned?

A. Yes.

Q. Then all the letters that you wrote to Mr. Mandeville and which he wrote to you and you wrote to Mr. Niver and Mr. Niver wrote to you were exchanged between you as president of the wholly owned company with them as officers of the owning company, is that right?

A. That is right.

Q. In this one letter here to Mr. W. H. Mandeville, now that is, "Dear Bill",—that is the younger Mandeville, isn't it?

A. Yes.

Q. Now during 1938 what was his position with the Thatcher Company?

A. He was the lawyer for Thatcher and also our lawyer.

Q. Was he a son and is he a son of the H. C. Mandeville?

A. Yes.

Q. You were asked by Mr. Freed as to a meeting in Pittsburgh referred to in this letter, Government's Exhibit 795, and you were asked what boys were there, and you told of various boys being there connected with various glass companies, and you were asked whether or not those companies were members of the Glass Container Association and you said yes. Was that a meeting of the Glass Container Association?

A. I would say no.

Q. Was Mr. Ackerman there, or Mr. Stevenson?

[fol. 3819] A. I would not recall whether they were at that particular meeting or not.

Q. But is it your best recollection, so far as this Pittsburgh meeting was concerned, in your mind it was not a meeting of the Glass Container Association?

A. It was not.

Q. There are a couple of letters here in which you refer to quota. I will ask you whether or not your company, the Olean Company, had any agreement at these times with any other companies as to what its quota should be or had to be?

A. No.

Q. Was there, so far as you knew, anything in any manner compulsory upon the subject of your quota?

A. No.

Q. What connection is there, if any, and was there, if any, between the quota and the production capacity of your plant, as you understood it?

A. It was the rate of volume that you could put out for the type of machines you had and the size of your furnace.

Q. In this letter where you talked about acquiring a plant or a machine at Lockport, Exhibit 796, you say, "After giving further consideration to what you said about aggravating your competitors by more production we have decided not to request that you allow us to put in an extra machine at your Lockport factory. We are going to give up some of our cheaper ware and some of our catsup business, so [fol. 3820] we will be within our production limits here." Did you have in mind increase of your production by acquiring the Lockport plant?

A. Yes.

Q. And you gave that up, is that right?

A. Yes.

Q. Something has been said here about these statements that were sent out by the Glass Container Association, and your attention has been called to one that has been introduced in evidence when Mr. Underwood was on the stand, that is Government's Exhibit 600. Does your Olean Company get the same exhibits from the Glass Container Association?

A. Yes.

Q. And you get them every month?

A. Yes.

Q. It says, Industry Forecast, so many million gross, Your Forecast, so many thousand gross, your forecast percentage. Now of course this is not the statement you got, but it was just the same in those respects as this statement I have here, Government's Exhibit 600, is that right?

A. Yes.

Q. Do you know whether or not, that your forecast percentage on your statement was the same for many years for a long period of time, or was it changed?

A. It was the same for—until we built our other factory.

Q. Until you built your other factory and got more pro- [fol. 3821] duction, is that right?

A. Yes.

Q. Do you know whether or not there came a time in the summer of 1939, about August or July, I guess it was 1939, when the statements that were sent out by the Association omitted this forecast per cent? Do you have any knowledge of that fact?

A. I would not recall that.

Q. You don't remember that yourself?

A. No.

Q. Do you remember whether or not your production was in excess of your so-called percentage forecast?

A. Oh, yes.

Q. Always?

A. Always.

Q. Was it ever the same?

A. No.

Q. Always above?

A. Always.

Mr. Day: I think that is all.

The Court: Any further cross examination?

Mr. Goodrich: I would like permission to adopt this witness as a Hartford witness for about five minutes. It will save calling him back.

Mr. Isseks: We have no objection providing it is limited as to time. We have another witness here that we want to get through with this afternoon so he can go home.

[fol. 3822] The Court: He says about five minutes.

Mr. Goodrich: I will be very brief.

Thereupon, the witness was called by Hartford Company on direct examination as follows:

Direct examination.

By R. Goodrich:

Q. In Exhibits 791 and 792, Mr. Dugan, you referred to some gallon jars you were going to try to produce. Do you remember that?

A. Yes.

Q. Did you ever get that jar in production?

A. No.

Q. Did you ever get any gallon container into production?

A. Not of that type.
Q. But of another type.
A. Yes.
Q. Did you have difficulty getting that into production?
A. You mean that one?
Q. The one you did get into production?
A. Yes.
Q. What was your principal difficulty?
A. Manufacturing and personnel and machine trouble.
Q. Where was the machine trouble particularly?
A. We had trouble getting our gallon jugs through these lehrs or tempering ovens so they would stay together, or so that they would not crack and fall apart when they arrived at the other end of that lehr.
Q. You had difficulty in annealing them principally?
[fol. 3823] A. That is right.
Q. What did you do about it,—did you call anyone?
A. I called and wrote Hartford-Empire Company.
Q. Did Hartford-Empire come down?
A. It certainly did.
Q. Did it solve your problem for you?
A. Yes.
Q. How long have you been a licensee of Hartford?
A. Since its incorporation, 1929.
Q. You have been with Olean how long?
A. Since 1931.
Q. What kind of machines do you have at Olean?
A. Hartford "I.S." machine, Lynch-Miller pressers, and we have Lynch LA machines.
Q. Do you find the Hartford machines satisfactory in your shop?
A. We like the Hartford machines the best of any.
Q. Do you call on Hartford for services at your plant?
A. All the time.
Q. Do you find that service readily available to you?
A. Yes.
Q. And efficient?
A. Very.
Q. And satisfactory to you?
A. Very.
Q. In your experience has Hartford been helpful to you in your business?
[fol. 3824] A. Very much.

Q. In your opinion is Hartford necessary to you in your business?

Mr. Isseks: I object.

The Court: I think I will sustain that objection.

Q. Under your license at present you have no restrictions of any kind on the ware that you may make?

A. No.

Q. You also have Hartford's feeders in your plant, Mr. Dugan?

A. Yes.

Q. How many?

A. Thirteen.

Q. Do you find them satisfactory?

A. Very.

Q. Are they kept in efficient working order by the Hartford engineers?

A. Very good condition.

Q. I show you Exhibit H-5071, which is a letter of December 29, 1938, addressed to Mr. A. M. Pease, and signed by you. That is your signature, isn't it?

A. Yes, sir.

Mr. Goodrich: I offer it in evidence.

The Court: It may be admitted.

Q. Before reading the letter, Mr. Dugan, was this letter solicited from you by Hartford-Empire?

A. No.

[fol. 3825] Q. You wrote the letter voluntarily?

A. Very happy to.

Q. Did you mean what you said in it?

A. Every word of it.

Q. It states the facts?

A. It certainly does.

Mr. Goodrich reads Exhibit H-5071.

Mr. Goodrich: No more questions.

Mr. Day: May I ask just one more question?

Re-cross examination.

By Mr. Day:

Q. Mr. Dugan, the answer you gave as to the increase in your forecast which you gave a moment ago, was that predicated upon your present best recollection of it?

A. At our present operation?

Q. No, you answered a while ago there came a time when your forecast was increased you think?

A. Yes.

Q. Is that based upon your best recollection?

A. Yes.

Re-direct examination.

By Mr. Freed:

Q. Is Thatcher Manufacturing Company a member of the Glass Container Association?

A. They haven't signed this year's contract.

Q. Were they members of the Association from '35 until this year's contract?

A. Yes.

The Court: Any further questions? If not the bailiff may recess court fifteen minutes.

(Recess 15 minutes.)

[fol. 3826] Thereupon the Government called as a witness, G. Fred Rieman, who, being first duly sworn, testified as follows:

Direct examination.

By Mr. Apsey:

Q. What is your name?

A. G. Fred Rieman.

Q. You are a defendant in this case, Mr. Rieman?

A. Yes.

Q. Where do you live?

A. Muncie, Indiana.

Q. Are you now engaged, in some capacity, in the glass business?

A. Yes.

Q. How long have you been connected with the glass business?

A. Over twenty years.

Q. With what company did you first become connected in the glass business?

A. The Anchor Cap & Closure Corp. was my first connection with the glass business.

Q. When was that?

A. That was in 1916.

Q. Where is that plant located?

A. It was located at Long Island City.

Q. In what capacity were you with that company?

A. I just started in as an all-around man in the cap and closure business, but that company went into the glass business.

Q. At the time you went in it was engaged in the cap and [fol. 3827] closure business?

A. In the cap and closure business. They manufactured the closures and caps, and machinery for caping glass bottles and jars.

Q. How long were you with that company?

A. Until I entered, enlisted in the Navy, then when I got my discharge I immediately went back there.

Q. What year did you go with the Navy?

A. 1917.

Q. And when you went back with that company did you hold any official position, executive position?

A. Not immediately.

Q. Did you at some later time?

A. About a month after my discharge, Mr. Stewart, the president of the Anchor Cap & Glass Corp. sent me to Connellsville, Pennsylvania, where Mr. Stewart and some of his associates were starting a glass factory. The name of that factory was the Capstan Glass Company.

Q. And did you become connected with the Capstan Glass Company?

A. Yes, I went there in a general capacity at first, and in a year or so I was made the general manager of the plant. It was a very small plant at the time.

Q. In what year did you go there?

A. I went there in May, 1919.

Q. At that time what if anything was the connection between that company and the Anchor Cap & Closure Company?

A. The Capstan Glass Company was owned by the same [fol. 3828] owners; in other words, the same men who were interested in the Anchor Cap & Closure Corp. furnished the money to start the Capstan Glass Company.

Q. Now, did you at that time, were you promoted from

the position of general manager to another position with the Capstan Company?

A. Yes, I was made the president of the company.

Q. When was that?

A. Approximately towards the end of 1920.

Q. Now, there was a third company called the Anchor Cap Company formed at some time?

A. The correct name was the Anchor Cap Corporation.

Q. When was that formed?

A. That was formed in 1929. It was a holding company for the Anchor Cap & Closure Corporation,—the Capstan Glass Company,—and another Anchor Cap & Closure Corporation of Canada, Ltd., and several small machinery companies; they were all subsidiaries of the Anchor Cap Corporation.

Q. And the Capstan Company, was that a wholly owned subsidiary?

A. Yes, sir.

Q. Is that also so of the Anchor Cap & Closure Company?

A. Yes.

Q. Did you hold any executive position with the Anchor Cap Corporation, the holding company?

A. I was the vice-president and director.

Q. Were you elected the vice-president and director in 1929 when the company was formed?

[fol. 3829] A. Yes.

Q. How long did you hold that position with the Anchor Cap Corporation?

A. Until it bought, or merged with, the Hocking Glass Company. The date of that was December 31, 1937.

Q. How long did you hold your position as president of the Capstan Company?

A. Up until that day, possibly a little later, it might have been early the following year before those changes were made. That would have been in 1938, early 1938.

Q. It was on December 31, 1937, the Anchor Cap Corporation acquired the assets of the Hocking Glass Company?

A. That is right.

Q. At that time was there some change in the name of the Anchor Cap Corporation?

A. The name was changed to the Anchor-Hocking Glass Corp.

Q. That is one of the defendants in this case?

A. Yes.

Q. And was there any change in the management at that time?

A. Yes, Mr. Stewart became the chairman of the board, Mr. I. J. Collins became the president; then shortly thereafter Mr. Stewart resigned and Mr. Collins was the president of the company; and Mr. William V. Fisher, one of the vice-presidents, and there were other vice-presidents.

Q. Mr. Collins had been with the Hocking Company before it sold its assets to Anchor Cap Company?

A. Yes, he was president of the Hocking Company.

Q. There was stock of the Anchor Cap Corp., later known [fol. 3830] as the Anchor-Hocking Glass Company, issued to the Hocking Glass Company in exchange for the assets; is that right?

A. That is right.

Q. Did you remain with the Anchor-Hocking Corp. for any period after the purchase of the Hocking assets?

A. I remained until August, 1939, when I resigned from the company.

Q. Well, during that period from January 1, 1938, to August, 1939, what was your official position with both the Anchor-Hocking and the Capstan Companies?

A. My capacity with both was vice-president and director.

Q. Was the name of the Capstan Company changed at some time?

A. It was changed shortly after that merger, to the Anchor-Hocking Glass Corporation of Pennsylvania.

Q. And it still has that name today?

A. To my knowledge, it as far as I know, has.

Q. To the best of your recollection?

A. Yes.

Q. Now, in August of 1939 you left the Anchor-Hocking Corp.?

A. Yes.

Q. Where did you go then?

A. I went with Ball Brothers Company, of Muncie, Indiana.

Q. What was your reason for going with them?

A. I wasn't particularly satisfied with my situation with Anchor-Hocking, and when Ball Brothers Company offered me a position with them, it looked more attractive, so I resigned to accept it.

Q. You are with the Ball Brothers Corp. at the present time?

[fol. 3831] A. Ball Brothers Company.

Q. In what capacity?

A. Assistant vice-president.

Q. Now, when the Capstan Company went into the glass business, I believe you said sometime in 1920——

A. 1919.

Q. —what kind of feeders did it have at that time?

Mr. Fuller: If the Court please, I should like to interpose an objection at this time, and with the Court's permission I would like to state the grounds.

The Court: Proceed.

Mr. Fuller: The evidence shows, the testimony just given by the witness, that Capstan Glass Company did not become subject to the management, direction and control of the Anchor-Hocking Glass Corp., as now constituted, until December 31, 1937; therefore Anchor-Hocking Glass Corporation, and each of the individual defendants of that group, object to any and all evidence with respect to the acts or activities of Capstan Glass Company or any of its representatives prior to December 31, 1937, on the ground it is irrelevant and incompetent and beyond the scope of the pleadings or connective purposes insofar as these particular defendants are concerned.

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[fol. 3832] The Court: You may have your objection. Counsel may proceed.

Mr. Fuller: May there be a continuing objection, if the Court please?

The Court: Yes.

(Previous question read, as follows:)

"Q. Now, when the Capstan Company went into the glass business, I believe you said sometime in 1920——

[fol. 3833] "A. 1919.

Q. —what kind of feeders did it have at that time?"

A. In 1919, I should say that Mr. Stewart, in advance of the starting up of this company, negotiated with Mr. Beatty, of Tucker, Reeves & Beatty, and had an agreement with him whereby Mr. Stewart and his associates would

start up a glass company, and whatever glass company that was, they would use Tucker, Reeves & Beatty feeders. So we started with Tucker, Reeves & Beatty feeders.

Q. How many of those feeders did you have?

A. Originally there were nine. At that time we got nine.

Q. This Mr. Stewart is I. R.——

A. Isaac R. Stewart.

Q. He was president, I believe you testified, at this time, of the Anchor Cap & Closure Corp.?

A. To start with, and then president of the holding company, the Anchor Cap Corp.

Q. And the licenses from Tucker, Reeves & Beatty originally went to Mr. Stewart as an individual, is that right?

A. To my best recollection that is correct.

Q. And then were assigned by him to the Capstan Company?

A. Then were assigned to Capstan, yes.

Q. Did you at some time learn that you were no longer a licensee of Tucker, Reeves & Beatty?

A. Yes.

Q. Well, do you know about when that was, what year?

Mr. Goodrich: May I interpose an objection? I must [fol. 3834] object to the question. I think Mr. Apsey is under a misapprehension of fact. I think, as a matter of fact, the Tucker, Reeves & Beatty license is still in effect.

Mr. Apsey: We will bring that out. I didn't ask him whether he held under a Tucker, Reeves & Beatty license, I asked him if he learned he was no longer a licensee of Tucker, Reeves & Beatty, and the answer was "yes".

Q. Will you tell us about what year it was you obtained this information?

A. It was about 1925, as I recall it.

Q. And from whom did you obtain it?

A. I cannot remember exactly from whom we obtained it, but it was when Hartford-Empire bought out Tucker, Reeves & Beatty, and we were, of course, notified of that. I couldn't remember the details.

Q. You were notified by Hartford-Empire, I suppose?

A. I cannot remember how we got that notification.

Q. But you were notified of that fact?

A. Yes.

Q. You started then at that time to pay your royalties to Hartford-Empire?

A. Negotiations started with Hartford-Empire, and as I recall it, there was some arrangement to take care of the royalties in the negotiations.

Q. What was the object of the negotiations started at that time with Hartford-Empire?

[fol. 3835] A. We had an original contract with Tucker, Reeves & Beatty which contained some special features which were objectionable to Hartford-Empire, because they had other licensees and they desired to keep those matters uniform. We, on the other hand, had our contract with Tucker, Reeves & Beatty and we saw no reason to change it.

Q. But you were required to change, is that right?

A. Those negotiations were a long time ago and all I can do is remember them in principle, and I haven't been particularly interested in them during the last few years.

Q. Your best recollection?

A. My best recollection is that we would not concede anything, but finally did concede that we would have some of the rates changed to be uniform with other licensees, with the understanding that we would have a "most favored nations" clause in our contract.

Q. Now, what do you mean by a "most favored nations" clause?

A. That our contract would, that our rates would be as low as the most favored company, and there were a few exceptions stated in there which we agreed to.

Q. Were the rates different from those you had been paying to Tucker, Reeves & Beatty?

A. If so, not to any great extent. I cannot remember that detail.

[fol. 3836] Q. Then did you then sign a new license with Hartford-Empire Company?

A. The negotiations ended by our signing a new general agreement with Hartford-Empire.

Q. And that was some time in the year 1925?

A. I cannot remember when the negotiations were completed, but I looked up to see the date of that general agreement, and it was October 3, 1925.

[fol. 3837] Q. Before this time, before you were notified that Hartford-Empire had bought out Tucker, Reeves & Beatty, you had not been consulted concerning the transfer, had you?

A. We were not consulted prior to that, to my recollection.

Q. Did you have any knowledge before the transaction was completed that it was on foot?

A. I do not recall any.

Q. Now, at some time or another efforts were on foot in the Capstan Company to develop feeders of their own, is that right?

A. Yes.

Q. About when did that start?

A. That started in 1932, second half of the year.

Q. What was the reason at that time for going into a development of your own feeder?

A. Because we knew after the election that year, or we felt quite certain, that beer would return. We realized that would bring back a new field to the glass industry and we desired to get our share of the new field.

Q. Well, did you have a right to make beer bottles under your Hartford license?

A. We did not.

Q. Is that why your Tucker, Reeves & Beatty feeders could not be used for that purpose?

A. That is right.

Q. And the development of the other feeder was therefore for the purpose of being in position to make beer bottles, [fol. 3838] is that right?

A. Yes, and more as an evidence to Hartford-Empire that we intended to get into the manufacture of beer bottles.

Q. Well, did you actually successfully produce another machine, another feeder?

A. It was a feeder quite similar to existing feeders, quite similar to Tucker, Reeves & Beatty, and had features of each, Tucker, Reeves & Beatty, and the Hartford feeder.

Q. And you called that the Capstan feeder?

A. Yes.

Q. And when did those feeders go into operation?

A. To my best recollection, July of 1933.

Q. How many of those feeders did you have?

A. Four.

Mr. Apsey: At this time, Your Honor, I will offer in evidence a letter dated December 12, 1932, from the witness, G. F. Rieman, to Holland & Armstrong, which has been stipulated as genuine by the Anchor-Hocking at page 4 of the Stipulation.

Q. I will ask the witness whether he wrote that letter?
A. I presume that I did.

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[fol. 3839] Mr. Fuller:

Q. Mr. Rieman, who was Messrs. Holland & Armstrong, to whom this letter was addressed?
A. They were our attorneys, patent attorneys.

Mr. Fuller:

Q. They were outside counsel?

The Witness:

A. Yes.

Mr. Fuller: We object on the ground of privilege.

Mr. Apsey: I would point out, Your Honor, two things in this connection: that this letter is not one requesting an opinion, in the first place; in the second place, it bears on its face evidence it was produced to the government, and we have the copy that was produced by the Anchor-Hocking Corporation, with the signature on it, and I think any privilege has been waived.

The Court: Produced over subpœna?

Mr. Fuller: Produced pursuant to subpœna, if the Court please.

Mr. Middleton: May I, on behalf of Owens, also object and call attention to the third paragraph which mentions Owens, and which is a complete misstatement of the facts, and is not evidence as binding Owens.

Mr. Apsey: This is only offered at the present time to [fol. 3840] show the state of mind of the witness as leading up to these negotiations, and no opinion is requested; it doesn't involve a legal question, and as we said, we contend that the privilege if any existed, has been waived by production to the government.

The Court: I overrule the objection on the ground of its being a privileged communication. There is no opinion offered or requested, merely a statement of certain transactions. It may be admitted for the limited purpose that counsel for the government has stated.

Mr. Apsey: I would like to have it read.

(Government's Exhibit 798 read by Mr. Kramer.)

Mr. Apsey: I have had marked as Government's Exhibit 799 a photostatic copy of a memorandum of the witness, addressed from Capstan to Anchor under date of September 25, 1933, and stipulated as genuine at page 5 of the Anchor-Hocking Stipulation.

Q. I will ask the witness, it is signed "R"? Is that your signature?

A. Yes, it is.

Q. As to these memoranda addressed from Capstan to Anchor, to what individual at Anchor would they go?

A. They were addressed to the president, Mr. I. R. Stewart.

Mr. Apsey: I offer it in evidence.

Mr. Goodrich: The same objection.

The Court: It may be admitted.

Mr. Wall: Is it admitted for the limited purpose?

Mr. Apsey: It is not offered for the limited purpose.

[fols. 3841-3842] Mr. Wall: I am asking whether it is so admitted?

The Court: It is admitted for the limited purpose.

* * * * * * *

[fol. 3843] Q. Mr. Rieman, what was the subject of the letters referred to in the first paragraph here which you say tell their own story?

Mr. Wall: Objection, Let's have the letters.

Mr. Apsey: The letters are not available.

* * * * * * *

[fol. 3844] A. They were letters connected with the Lynch Corporation, and advised us of some new situation whereby Hartford-Empire and the Lynch Corporation had made an agreement regarding patents—this is to my best recollection—made an agreement regarding certain patents which Hartford-Empire controlled so that in order to use Lynch machines we would be required to take a Hartford license.

Q. Did you have any Lynch machines?

A. Yes.

Q. And you didn't like this requirement?

A. No.

Q. Then referring to the second paragraph here, "We have to make some decision regarding additional feeders on

or before October 15th," what was that reference to?

A. There was some stipulation in our temporary beer bottle license that we were to discontinue using them and substitute other feeders for them by that date, or make a decision regarding it.

Q. You had a temporary beer bottle license then at the time of this letter, that is right, isn't it?

A. That is my recollection.

Q. Had you experienced any difficulty in getting that license?

A. Yes, we had.

Q. Will you tell us what that difficulty was?

[fol. 3845] A. When we realized that beer would return and we wanted to get our share of that new business we immediately went to Hartford-Empire and asked for a license to make beer bottles. After some negotiations and correspondence it looked as if this might be difficult for us to get, so we started to develop our own experimental feeders.

Q. Who did you get in touch with at Hartford about this?

A. Their officials. As I recall it, Mr. R. M. Eldred and Mr. Goodwin Smith.

Q. Did you also have some conversations with Mr. Levis about this matter of beer bottle rights, Mr. William E. Levis?

A. Not that I can recall.

Q. See if I can refresh your recollection. I call your attention to Government's Exhibit 416, a letter of October 28, 1932, from F. Goodwin Smith to Henry W. Carter, and direct your attention to the second paragraph in that letter, "Rieman met Mr. Levis in New York about two weeks ago and asked for the right to make beers. Both Mr. Levis and I thought we had convinced Rieman that it was an illogical request for him to make, and that his company had no place in the beer field." Do you remember that conference?

A. I don't remember the conference, and this letter, of course, is from Mr. Goodwin Smith, but I usually talked any matters of importance over with Mr. Levis, so I may have.

Q. You were well acquainted with Mr. Levis at this time?

A. Yes.

[fol. 3846] Q. How long had you known him?

A. I can't remember when my friendship first started, but we both have been in the glass industry about the same length of time, and I frequently discussed things with him

because I liked to have his view and knew I could get very important advice from him from his broad experience.

Q. Did you know him before you went into the glass industry?

A. No.

Q. But from the beginning of your being in the industry you were close friends with him, is that right?

A. For many years.

Q. You knew him in a social way as well as a business way?

A. Not particularly social.

Q. But you did have some social contact with him?

A. A few, as men in business will have.

Q. Now I direct your attention to the last paragraph of Exhibit 416, "I told Rieman that if we granted his company the right to make beers there was no reason in the wide world why we should not grant a similar request from Federal, Hocking, and others, and he admitted our logic was sound. Also, I thought I had convinced him that if every manufacturer was going to rush into the beer market the price structure would fall and beers would be selling on an even lower basis than packers' ware." Does that correctly represent the conversation Mr. Smith had with you, or that conversation?

[fol. 3847] A. I can't recall that conversation. In fact, I don't remember he ever convinced me we should never have a beer license.

Q. He used those arguments?

A. I can't recall that. I don't remember what the arguments were.

Q. He used some arguments, whatever they were, you didn't think much of them?

A. No, I did not.

Q. There was considerable agitation in the glassware industry at that time right after the election in the fall of 1932 about the right to make beers, is that right?

A. Yes.

Q. There were other companies that wanted to have that right?

A. I presume so.

Q. And some of the companies that were interested in it got together to talk over the situation?

A. That probably occurred.

Q. Do you remember some meeting at which your Company was represented with representatives of Owens, Hazel, and General, where the right to make beers was under discussion?

A. It sounds as though it may be that happened. I would be glad to have you refresh my memory.

Q. I will call your attention to a memorandum which I have marked Government's Exhibit No. 800, dated January 5th, 1933, addressed from Capstan to Anchor, signed "R", with initials G. F. R. I believe that is the memorandum [fol. 3848] which you wrote, isn't it?

A. Yes, it is.

Mr. Apsey: It is stipulated as genuine by Anchor-Hocking in their stipulation at page 9. I will offer it in evidence.

Mr. Fuller: I have two letters of that date.

Mr. Apsey: It is the one that begins with further reference to my letter of December 31st.

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The Court: It is accepted solely for the witness's own views.

Mr. Middleton: Yes, that is right, and not to prove the truth of the statement.

Mr. Apsey: That is agreeable.

Q. The meeting which is referred to there in the second paragraph was the one you just testified to as having some recollection of?

[fol. 3849] A. There must have been such a meeting from this letter, yes.

Q. At this time, on January 5th, 1933, you still did not have a beer license yourself from Hartford, did you?

A. No. We did not.

Q. Who were the individuals present at this meeting between Owens, Hazel, General, and Capstan?

A. I mentioned Walter McClure, that would be of the Hazel-Atlas Company, and I can't recall the men that would have been there from the other company.

Q. Was Mr. Levis there?

A. I don't think so because I believe I would have mentioned that if he had been.

Q. You would remember that; he was a very close friend of yours, is that right?

A. Yes.

Q. Was Mr. Collins there, Mr. Ike Collins?
A. I can't recollect.
Q. This is your best recollection as to who was present?
A. Yes.
Q. And the thoughts which you had put down in this letter, were they the result in your own mind of what you heard at that meeting?

Mr. Wall: I object to that if it is intended for anything other than his own views or feelings.
Mr. Apsey: It is not.
The Court: He may answer.

[fol. 3850] Q. Do you understand now?
A. I will ask to have the question repeated.

(Question read by the reporter.)

A. No. They were not as a result of what I heard at that meeting. They were my thoughts.
Q. They resulted from other information that you had?
A. From other impressions and understandings that I had, yes.
Q. Now, some time shortly after this letter, this memorandum in January, you were actually in negotiation with Hartford for beer bottle license, isn't that right?
A. Yes.
Q. I now direct your attention to a letter which has been marked as Government's Exhibit 801, stipulated as genuine at page 4 of the Anchor-Hocking Stipulation, from G. A. R-eman, that is you, to the Hartford-Empire Company, attention R. F. Eldred, dated March 31, 1933. This is a very poor copy. I think I will let you look at a better copy. While you are looking at this I will offer it in evidence and have it read. I offer it in evidence, Your Honor.

The Court: It may be admitted.

(Mr. Kramer starts to read Government's Exhibit 801.)

Mr. Middleton: We haven't had the chance to read this. Is it understood it is received for limited purpose for the time being?

(Mr. Kramer continues and concludes reading Exhibit 801.)

[fol. 3851] Q. You wrote that letter, Mr. Rieman?

A. Yes.

Q. What was the reasonable control that was referred to there in the second paragraph?

A. We did not want to be paying any royalty fees that other people were not paying, and in making the statement that way I simply wanted to let Hartford-Empire know that we would not continue to go along with them if their patent situation wasn't such that it was to our advantage to continue.

Q. Hadn't Hartford asked you to do something to assist in extending their reasonable control, isn't it what that refers to?

A. Hartford had the feeling they were really trying to treat us fairly.

Mr. Goodrich: I am sorry to interrupt. May he state what Hartford did or said?

The Court: Yes.

Q. I direct your attention to the second sentence of the second paragraph, "We certainly expect to cooperate with you as long as you are making progress and so long as it is working to our advantage". What request, if any, on their part called for that observation from you?

A. I can't recall any request but I can state this is a selling paragraph. I wanted to accomplish something and I was showing a desire to cooperate.

Q. You would not say Hartford had asked your coopera-
[fol. 3852] tion with respect to control, would you?

A. They may have but I would not recall just what that was.

Q. Well, we will come to that in a minute. At some time not long after that you finally came to an agreement with Hartford, is that right, on beer bottles?

A. Yes. We came to an agreement with them.

Q. I show you copy of Government's Exhibit 475, which is a letter agreement between yourself and Hartford-Empire Company dated April 13, 1933, and I will ask you if that embodies the first agreement which you came to with them in regard to beer bottles?

A. What is the question?

(Question read by the reporter.)

A. Why, yes.

The Court: You may suspend at that point. The bailiff may recess court until ten o'clock tomorrow morning.

(Night adjournment.)

[fol. 3853] (At 10 o'clock a.m., Thursday, April 17, 1941, the trial was resumed.)

The Court: Proceed.

Mr. Apsey: If Your Honor please, in connection with Government's Exhibit 799, yesterday request was made on counsel to produce certain letters which were referred to in that exhibit, letters from Hartford-Empire and Lynch Corp., which had been received by the witness. Copies of those letters were produced at the end of yesterday by Anchor-Hocking, and as far as the government is concerned, they are rather long and will take up considerable time, and we don't desire to offer them unless the defendants wish to insist on their objection to the witness' testimony on the ground the letters are the best evidence, in which event we will offer them.

Mr. Goodrich: Well, that objection was made and we insist upon it.

The Court: All right, they may be offered.

Mr. Apsey: I will then ask that they be marked. (Letters marked Government's Exhibits 802 and 803.)

I will offer these in evidence, Your Honor.

The Court: They may be admitted.

Mr. Apsey: The first of these exhibits, 802, is a letter addressed to the Capstan Glass Company by Hartford-Empire Company, signed by Arthur T. Safford, Jr., as secretary, under date of September 20, 1933, produced from the files of Anchor-Hocking. The second exhibit, 803, is from the Lynch Corp., addressed, simply, "Gentlemen", [fol. 3854] dated September 23, 1933.

Q. I will ask the witness whether these are the letters referred to in Exhibit 799?

A. (After examining same, and Exhibit 799.) To the best of my recollection those are the enclosures that were meant there.

Mr. Apsey: With Your Honor's permission, I will ask my associate, Mr. Francis R. Shields, who is admitted to practice in the Patent Office, though not a member of any bar, to read these exhibits.

The Court: It may be done.

(Mr. Shield thereupon read Government's Exhibits 802 and 803.)

Q. You will remember, Mr. Rieman, that toward the close of yesterday's examination we were discussing Government's Exhibit 801, which was a letter from you to the Hartford-Empire Company, with particular reference to a statement in the second paragraph:

"We certainly expect to cooperate with you just as long as you make such progress in extending your reasonable control as to convince us the situation is working to our advantage",

and I had asked you what suggestion of Hartford-Empire that offer on your part to cooperate with them in extending their reasonable control referred to, and you had said without anything to refresh your recollection you were a little bit hazy in your recollection, or something to that effect. After that I brought your attention to Govern-
[fol. 3855] ment's Exhibit 475, which had been previously introduced in evidence, and which was the contract which permitted you to make beers, which was dated April 13, 1933. Now, I direct your attention to paragraph two of that contract, which reads:

"So long as said extension remains uncancelled Capstan desires to and will cooperate with Hartford in every possible way to the end that Hartford's licensing business be of general benefit to the industry as a whole."

What was the meaning of that—what did you understand that required of your company?

A. That paragraph, of course, was written by Hartford-Empire, Mr. Safford, and as in all matters of this kind, this would have been referred to our attorneys, and they saw no objection to that paragraph, so it was passed over. I really didn't give it any great importance and I don't have any opinion on it right now.

Q. Does that have reference to the same subject-matter you were talking about in your letter dated March 31, 1933, Government's Exhibit 801, when you were talking about, "We certainly expect to cooperate with you as long as you make such progress in extending your reasonable control

as to convince us the situation is working to our advantage"?

A. Since the words are quite similar, that seems possible.

Q. Don't you remember what was really referred to by that was a requirement you should cooperate with Hartford in its control over the different rights that might be ac- [fol. 3856] corded applicants for licenses to manufacture glass?

A. I cannot recall the details of that situation.

Q. Would that have been a reference to cooperation in the control of prices in the industry?

A. No, I am certain of that.

Mr. Goodrich: I object to that question. The witness has said he cannot recall what this refers to.

The Court: Overruled. He may answer what his interpretation is.

A. (Cont'd.) I never discussed prices or price situations of any kind with the Hartford-Empire except the prices of their equipment and feeders.

Q. Well, you remember when you were trying to get a license from Hartford for beer bottles there was reference made by Mr. F. Goodwin Smith to the fact that if a license was given to you there would have to be one given to a lot of other companies, and that would destroy the price structure—don't you remember that observation on the part of Mr. Smith?

A. Yes, I do. I didn't make the observation and I wasn't concerned with it.

Q. No, but you have testified this paragraph 2 was inserted at the insistence of the Hartford people, and I ask you whether that wasn't inserted with reference to that thought of control?

A. I cannot remember the exact reason for that.

Q. At any rate, as the result of this agreement of April 13, 1933, Government's Exhibit 475, you gave up your right to use those Capstan feeders, and you got your beer bottles, [fol. 3857] is that right?

A. We continued to use those Capstan feeders. We got our beer bottle rights.

Q. Continued to use those Capstan feeders? Well, under this first agreement of April 13th, if I read it correctly, you

weren't supposed to do that. Doesn't it say, in paragraph one—will you read that and see if it refreshes your recollection?

Mr. Middleton: What is the paper you are referring to?

Mr. Apsey: Exhibit 475. That may have been changed later, and we will come to that, but under this agreement——

The Witness: Under this agreement, that is correct, we agreed to discontinue, so I think it was changed later. That is what confused me.

Q. You say that was changed later. Now, do you remember why the modification was made?

A. Yes, we started to use those feeders under what we might term this temporary agreement, and they had cost us considerable money to install the feeders and we did not desire to go into the expense of changing them and substituting either Tucker-Reeves feeders or Hartford feeders, for them, so, simply as a matter of saving money for my company, I told Hartford-Empire that we would prefer to continue using those feeders since they were satisfactory, and I believe the next agreement covered that.

Q. Well, were any further requirements made of you as a [fol. 3858] condition of doing that?

A. Yes; the requirements were that Hartford should get title to those feeders.

Q. And any other requirements?

A. Not that I recall.

Q. What about royalties?

A. And that we should pay their standard royalties, yes. That, of course, was in the temporary agreement.

Q. Of course you weren't paying royalties on any machines you weren't using; there was no requirement for paying royalties on the machines when you didn't use them?

A. That is correct.

Q. Now, I will call your attention to a letter agreement dated June 9, 1933, signed by Hartford-Empire Company by A. T. Safford, Jr., and for the Capstan Glass Company by yourself as president, stipulated as genuine on page 3 of the Hartford-Empire stipulation, marked for identification as Government's Exhibit 804, and I ask you if that is the next agreement that was entered into with Hartford concerning this beer bottle license?

Mr. Fuller: May I have the question read?

(Question read.)

Mr. Fuller: I don't understand the connation of the word "next". Next what?

Mr. Apsey: We have just been discussing the April 13, 1933, agreement.

Mr. Fuller: You mean the one following the April 13th, is that the one?

[fol. 3859] Mr. Apsey: That is right.

A. I don't know whether that was the next agreement. That was one of the agreements in that series, yes.

Q. That is your signature on the contract?

A. Yes.

Mr. Apsey: I offer it in evidence, Your Honor.

The Court: It may be admitted.

(Government's Exhibit 804 read by Mr. Lewis.)

Q. Did you install the four new Tucker, Reeves & Beatty feeders mentioned in this agreement or the four new Hartford single feeders?

A. No, we did not. We installed the Capstan feeders.

Q. At some time shortly after this did you also desire to make liquor ware in addition to beer bottles?

A. Yes.

Q. And did you enter into negotiations with the Hartford-Empire Company with respect to the rights to manufacture liquor ware?

A. Yes.

Q. You did not have that right under your original contract?

A. No, we did not.

Mr. Apsey: I will next offer in evidence, Your Honor, a letter agreement dated October 12, 1933, signed for Hartford-Empire Company by A. T. Safford, Jr., as secretary, and for the Capstan Glass Company by G. F. Rieman as president, which has been stipulated as genuine by Hartford-Empire at page 3 of the stipulation, and has been [fol. 3860] marked as Government's Exhibit 805.

The Court: It may be admitted.

(Government's Exhibit 805 read by Mr. Lewis.)

[fol. 3861] Q. So that in order to get your right to make liquor bottles, which is accorded by this contract, you had to give up again the right to use your Capstan feeders, is that right?

A. May I look at that a moment?

Q. Certainly. I direct your attention to the first paragraph.

Mr. Goodrich: I object to the form of the question for the simple reason he never had any right to use the Capstan feeders except under this temporary arrangement as set forth in the previous exhibit. I think the question carries the wrong interpretation.

Mr. Apsey: The last agreemnt in evidence, Your Honor, was one which the witness first testified, and the agreement states they did acquire the right.

The Court: I think he may answer the question.

A. At the time this agreement was signed we agreed to give up the use of those feeders.

Q. But you did get your right to make beers, liquor bottles and flasks?

A. Yes.

Q. Did you get a right to make as many liquor bottles and flasks as you desired to make; I will call your attention to Paragraph 3, Sub-paragraph 2?

A. Yes. There was a limitation of 150,000 gross in any one calendar year stated here.

[fol. 3862] Q. Had you asked to make more than that?

A. I don't recall. That was sufficient at the time being for our needs.

Q. You say you don't recall?

A. I don't recall whether I asked for more or not.

Q. I next offer in evidence, Your Honor, as Government's Exhibit 806, a photostatic copy of a contract stipulated as genuine by Hartford-Empire at page 3 of the Stipulation, entitled "Agreement Relating to Capstan Feeders between Hartford-Empire Company and Capstan Glass Company dated May 1st, 1934, "and signed by Hartford-Empire Company, Roger M. Eldred, General Manager Capstan Glass Company, by G. F. Rieman, President.

The Court: It may be admitted.

Mr. Apsey: In this agreement, briefly summarized, Capstan transferred to Hartford title to its four Capstan

feeders, and Hartford licensed Capstan to use them in accordance with the terms of the general agreement between the parties of February 17, 1926, as amended, except that as to such four Capstan feeders Capstan would pay Hartford a minimum annual royalty of $1500 per feeder. Capstan agreed to pay the royalties provided in said general agreement on ware produced by said feeders, but was absolved from the payment of any license fee. It was provided that the agreement should not change the patent rights of either party.

Q. That agreement, Mr. Rieman, was the final arrangement which you had with Hartford in regard to license for [fol. 3863] beers and liquor ware?

A. Yes. It was, to my knowledge.

Mr. Apsey: I next offer in evidence a letter, photostatic copy, stipulated as genuine by Anchor-Hocking at page 5 of its stipulation, of letter dated August 1, 1935, from the witness, G. F. Rieman, signed Capstan Glass Company, addressed to Holland & Armstrong, 2 Rector Street, New York, New York, Re: Hartford-Empire Negotiations. It has been marked Government's Exhibit 807. I offer it in evidence.

Mr. Goodrich: We object to this letter. It is purely hearsay. In this letter the witness writes to Messrs. Holland & Armstrong and tells them something what someone told him about somebody else. He quotes a man by the name of W. S. Rendall, who is alive and in the country, and can be called as a witness. Your Honor will see at a glance it is hearsay.

Mr. Apsey: It is not offered for the truth of what Rendall said. This witness is a defendant, and it is offered to show his state of mind and nothing more.

The Court: It will be admitted for that purpose.

Mr. Middleton: It is understood Owens especially objects [fol. 3864] to the letter for reason of the hearsay statements regarding Owens.

The Court: It will not be admitted for the truth of the statements.

Thereupon, Government's Exhibit 807 was read to the Court by Mr. Lewis, of counsel for the government.

Q. Now, Mr. Bieman, in the first paragraph you state that Mr. Brown will see you in New York Monday and meet with the Hartford people Tuesday, August 6th or 8th, is it?

A. 6th.

Q. What was the purpose of that meeting?

A. Mr. Brown was our general superintendent and I presume he was going over factory matters with Hartford-Empire.

Q. Isn't it so at this time there were important negotiations on between your company and Hartford?

A. I can't answer that. There were negotiations going on almost all the time.

Q. I call your attention to the last paragraph of the letter, the first sentence, "One thing that his talk with Rendall has given me is the feeling of more confidence in our negotiations with them. I am inclined to agree with Rendall that Goodwin Smith will not concede anything in these negotiations, but it may be far from helpless, and if we can convince them that if they do not give us something voluntarily we may progressively throw them out entirely, we may be able to force a change in his policy." What was the change in policy that you were trying to force from Mr. Goodwin Smith at that time?

[fol. 3865] A. I can't definitely recall what the negotiations were. Perhaps you have something there that could refresh me.

Q. Yes. I might possibly refresh your recollection. Here is a letter, the next month written to you by your lawyers, Norman M. Holland. Look at the first part of that and see if that would refresh your recollection?

A. Yes. That refreshes my recollection on the negotiation.

Q. Will you state what the change in policy was that you were trying to obtain from Hartford at that time?

A. It was a discussion about our most favored nation clause. In our general agreement we had such a clause and we strongly suspected that one of our principal competitors had a lower royalty rate than ourselves, which was contrary to our agreement, and we were trying to get an adjustment which would put us in line with our suspicions in the matter.

Q. Which competitor is that?

A. Hazel-Atlas Company.

Q. Did you have that suspicion with respect to any other competitors?

A. No.

Q. Now, in that connection were you not considering the cancellation of the beer and liquor license which finally culminated in that agreement of May 1st, '34, which had just gone into evidence?

A. We were not considering any cancellation of it, but according to the contract if we started to use experimental [fol. 3866] feeders it automatically cancelled the contract.

Q. You wanted to use experimental feeders, is that right?

A. We were considering them.

Q. Wasn't it necessary under that contract for you to give notice to Hartford if you determined to use experimental feeders and give up the beer and liquor license?

A. That is correct.

Q. You were considering giving the notice?

A. Yes.

Q. You have reference in this letter to the Salem Glass Works. Who were they?

A. That is a glass company located at Salem, New Jersey, which the Anchor Corporation bought in September, 1934.

Q. So they were a subsidiary of the parent company of the Capstan Company which you were connected with?

A. Yes.

Q. What was their business?

A. Substantially the same as Capstan.

Q. General line container ware?

A. Yes.

Q. Did they have a Hartford license?

A. Yes.

Q. Did they have a right to make beers?

A. Yes.

Q. Did that enter into your consideration in connection with the proposed giving up of your license to make beers and liquor ware in exchange for your right to use your [fol. 3867] Capstan feeders?

A. In this connection I don't think it had much if any influence.

Q. Had you done that beers could still have been made by the Salem Glass Works, is that right?

A. That is right.

Q. Why did you want to use your own feeders at this time?

A. It was in an effort to force the issue regarding royalty rates.

Q. You did not like to pay any royalties, did you, to Hartford, if you could avoid it?

A. That isn't true. We were willing to pay a reasonable amount for anything that is a benefit.

Q. You felt the royalty rates were unreasonably high?

A. I thought the rates were high.

Q. You finally abandoned the attempt, did you, to force the issue by giving up your beer and liquor license and taking up the use of your own machines again?

A. That is right.

Q. Did one of the considerations in that connection have to do with subjecting yourself to litigation?

A. We naturally were not looking for lawsuits.

Q. I will refer you again to this letter from your attorneys, and ask you—directing your attention to the second page, I will ask you if that refreshes your recollection as to the details of the litigation which you might have been subjected to?

Mr. Middleton: May we have the letter identified; is it [fol. 3868] one of September 9th?

Mr. Apsey: September 9th, 1935, from Holland to Mr. Rieman, of the Capstan Glass Company.

Mr. Middleton: It has not been identified?

Mr. Apsey: It has not been marked, no.

Q. Does that refresh your recollection, Mr. Rieman?

A. That was the opinion of our attorney as expressed in this way, yes.

Q. Can you tell the Court just what types of litigation you feared if you went ahead with the proposed giving up of your beer and liquor license in exchange for using your own feeders?

A. Well, from a personal standpoint I knew that the Capstan feeders infringed, so we were not very anxious to have that go into a lawsuit.

Q. Did you believe they infringed?

A. We did our best to avoid infringement but we feared very much that they did.

Q. I direct your attention again to the details here, and ask you if there were several accounts on which you feared that you might get into litigation. Did you have a fear that you might be sued for the use of the feeders, I think you said that,—what about J. P. Machines used with Capstan flows?

A. Well, that of course refers to the recent exhibit regarding the Lynch license, et cetera.

Mr. Goodrich: I suppose Your Honor will request counsel [fol. 3869] to bring out what a J. P. Machine is?

Q. What is a J. P. Machine?

A. It is a press and blow machine made by the Miller Machine Company and now Lynch Corporation.

Q. Would you have been subjected to suit by Lynch Corporation had you used this, was that what you were afraid of?

A. I can't say whether we would have been subjected to suit, but that would have been possible.

Q. Were you afraid of suit by Hartford-Empire people in regard to the J. P. Machines?

A. Our attorney in this letter advised that there wasn't danger.

Q. Did you have any fear in mind of being sued with respect to electric lehrs?

A. I didn't have much fear personally.

Q. Had you ever been threatened with suit with respect to electric lehrs?

A. Not to my knowledge, but our attorney thought we could be subject to suit on that.

Q. What about the O'Neill suction machines?

A. That was his opinion also.

Q. At any rate, you gave up that attempt. Now I think you have referred to this most favored nation clause?

Mr. Apsey: At this time, Your Honor, I am going to offer in evidence the agreement which we just found last night, the general agreement between the Capstan Glass Com-[fol. 3870] pany and the Hartford-Empire Company dated February 17, 1926. It is stipulated as genuine by Hartford-Empire at page 3 of its Stipulation, and signed on behalf of Hartford-Empire Company by F. Goodwin Smith as president, and on behalf of Capstan Glass Company by the witness. It has been marked for identification as Exhibit 808, and I now offer it in evidence.

The Court: It may be admitted.

Mr. Apsey: I will just read one or two short excerpts from the contract, which is a long one. The first one is Article 1, Section 1, title.

(Mr. Apsey reads.)

Q. Those machines, Mr. Rieman, were the Tucker, Reeves & Beatty machines which you had before Hartford acquired assignment from Tucker, Reeves & Beatty, is that right?

A. Yes.

Q. So you retained title to those?

A. Yes.

Mr. Apsey: Now, I will also read from Article 2, Section 3, which also refers to title.

(Mr. Apsey reads.)

Q. Did you ever get any additional feeders from Hartford under that provision?

A. To the best of my recollection we did not.

Mr. Apsey: Now I will read from Article 3, Section 8, which is headed "Royalties".

(Mr. Apsey reads.)

[fol. 3871] Q. Was that what you referred to as the most favored nation clause, Mr. Rieman?

A. Yes.

Q. You say that you suspected in 1935 that the Hazel-Atlas Company was getting preferential rates?

A. Yes.

Q. I now direct your attention to Government's Exhibit 567, which is a memorandum signed by Mr. Lloyd T. Williams, of a conference in New York May 17, 1935, with Goodwin Smith and later with him and Messrs, Brown and W. J. Belknap, and I refer you to the first paragraph of that exhibit, where it says:

"Capstan having taken over Salem, will be paying about $200,000 royalty per year and has been very insistent that it be fully advised of the terms of the licenses from Hartford to Owens and Hazel, threatening to bring suit unless that information is given or to cease paying royalties unless that information is given. They contemplate putting a plant in the middle west or perhaps on the west coast and may

delay the action about royalties until this acquisition or the building of this new plant is either consummated or definitely determined upon."

Does that refer to the negotiation which you were holding at that time to find out from Hartford about any preferential rate to Hartford?

A. Apparently it does.

[fol. 3872] Q. And did you at that time threaten suit if such information was not forthcoming?

A. To the best of my recollection, we did.

Q. Whom did you talk with at Hartford about this matter?

A. Mostly to Mr. Goodwin Smith and Mr. R. M. Eldred.

Q. Do you remember approximately when the first conference was held with respect to it?

A. I couldn't possibly remember that.

Q. Well, was it sometime in the year 1935?

A. It would have started quite soon after the settlement of the litigation between Hartford and Hazel.

Q. That was in 1932.

A. (No response.)

Q. What was the substance of the conversations that you had with Mr. Smith and Mr. Eldred concerning this matter?

A. In a general way it was that we believed our contract was being violated and that we should have an adjustment in our rate to put us on a basis with this competitor, on an equal basis with this competitor.

Q. Did you ask to see the Hazel-Atlas contract?

A. Yes.

Q. And what was the answer that you got?

A. I cannot remember the details, but I didn't see it, so the answer must have been in the negative.

Q. And what was the answer to your statement that you believed that the favored-nation clause was being violated as against you?

A. Well, their answer was that they did not consider it [fol. 3873] was being violated.

Q. But they refused to show you the agreement; is that right?

A. That is correct.

Q. Did you ask for a copy of the agreement from anyone in connection with Owens?

A. No.

Q. What made you suspect that Hazel-Atlas was getting a preference?

A. Just the general knowledge of the negotiations and suspicion; in other words, merely suspicion.

Q. Well, were these some facts that led to your suspicion on your part, some actual facts?

A. No actual facts.

Q. You hadn't heard at that time that Hazel-Atlas was getting a third of the net income from Hartford, from its licensees?

A. No.

Q. When did you first learn of that fact?

A. I heard it at the TNEC investigation.

Q. That was in December, 1938?

A. You would know better than I.

Q. I think it was, as a matter of fact. Now, had you heard at that time that the Owens Company was getting a split of a third of the net income from licensees?

A. Well, I wouldn't say that that was news to me at that time.

Q. When did you first learn of that fact?

A. In the general talk over many years it had been under- [fol. 3874] stood that Owens was connected with Hartford-Empire in some way or other and it was generally understood they were getting a part of it. That, again, was simply hearsay.

Q. Can you place the date of that at all?

A. No, I cannot.

Q. Now, I want to direct your attention to Schedule "C" attached to this contract of February 17, 1926, your license from Hartford-Empire, Government's Exhibit 808, and Schedule "C", you will find, is called "Specification of glassware which may be made. Permitted ware." And under that is a heading, "Exclusive Field: A. Packers' Ware, block mold type with jelly rings thereon. B. All other ware which is pressed only, and not blown or pressed and blown, except vault lights, ointment jars, fingerbowls, plates", and a long list of different kinds of ware. "C. Packers' jars adaptable for top seal, top side seal, such as American Metal top side seal, or friction seal caps, or Anchor Cap & Closure caps, or Phoenix Hermetic 'Cinch' or 'Hermetic' caps but of no other type of finish." Did

you have an exclusive right to make those articles listed under the exclusive field?

A. We had an exclusive right from Tucker, Reeves & Beatty. We would not have gone into the glass business hadn't we been able to get that from them under their patents. So when Hartford-Empire bought out Tucker, Reeves & Beatty we insisted upon having the same exclusive right on those feeders.

Q. And you kept that exclusive right right down to the [fol. 3875] time when you left the company?

A. Yes. Regarding that second paragraph, our principal business, early in the game, was the cap business, and that second paragraph refers to certain finishes that were especially adapted to the caps we manufactured.

Q. I will also refer briefly to the exclusions in this contract, which include the regular Corning exclusion which have been listed, such as milk bottles for raw milk, and nursing bottles, lantern globes, gas globes, chimneys, and most of those are in the Corning field.

In your negotiations with Hartford with respect to this preferential treatment by Hazel under the "most favored nations clause", did you make any mention of your proposed plant in the middle west or on the west coast?

A. We may have, I cannot definitely recollect.

Q. Did you use that as a talking point as to why you should have the information about the Hazel-Atlas preference?

A. I cannot recall that.

Q. I refer you again to this memorandum, Exhibit 567, by Mr. Williams, and refer you to the last sentence in the first paragraph, and ask you if that refreshes your recollection?

A. Only to the extent that our company had a plan to eventually have a plant in the east and a plant in the middle west, as well as the Connellsville or Capstan plant.

Q. What were you going to manufacture in that plant?

A. General line containers.

Q. And did your entry into that venture depend upon [fol. 3876] your having equal treatment with competitors?

A. We would try to keep from being at a disadvantage at all times.

Q. Now, in that connection you considered acquiring various other companies at one time or another, isn't that right?

A. Yes.

Q. One of the companies you considered acquiring was the Hart Glass Manufacturing Company?

A. Yes.

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[fol. 3877] Mr. Apsey: I will offer at this time as Government's Exhibit 809, a certified copy of a memorandum, certified as genuine by Anchor-Hocking at page 5 of its stipulation, being dated July 3, 1935, from the witness, of Capstan Glass Company, to Anchor, subject, "Hart Glass Manufacturing Company". I am going to have read, of this offer, the paragraph headed "Quota", beginning at page 2, which has to do with quota considerations involved in the acquisition of this company, which bear directly upon the question [fols. 3878-3880] of quotas in the trade, which is at issue under the allegations of the complaint with respect to the Glass Container Association. I offer it in evidence.

Mr. Rose: I object to the offering on behalf of the Glass Container Association, and ask that we have the same record as was made yesterday with respect to Exhibits 793 and 794, to which this is analogous in that respect. In other words, I object to the document if it is offered for proof of the statements contained therein.

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[fol. 3881] The Court: Now, your purpose is to offer the two paragraphs under the heading "License" for a limited purpose?

Mr. Apsey: That is right.

The Court: And your purpose is to offer the paragraph under the heading "Quota" generally?

Mr. Apsey: Generally, that is right.

The Court: I think I will overrule your objection and permit that to be done as counsel has indicated.

Mr. Fuller: May I make inquiry, if the Court please? I presume we are still operating under the arrangement whereby the objection made by one counsel inures to the benefit of the other defendants. If not, I would like to join in the G. C. A. objection on the record.

The Court: I think that is pretty generally understood. It is not necessary for every defendant to rise and state his objection to save the record.

Mr. Fuller: I thank you.

[fol. 3882] (Counsel started to read the paragraph headed "Quota".)

Mr. Rose: May I renew my objection to that paragraph?

The Court: I think I will overrule the objection and you may proceed.

(Said paragraphs headed "Quota" and "License" read by Mr. Lewis.)

Q. You heard that read?

A. Yes.

Q. What is the "Quota" that is referred to in that exhibit: what does that mean?

A. That "Quota" was set up by the NRA Code, or authority, and in the case of this company, Hart, I stated I thought it was about 2%.

Q. Well, that was a production quota?

A. It was set up on the basis of production capacity and sales capacity.

Q. And that was the amount which the Hart Company was permitted to produce in proportion to the production of the entire industry?

A. There wasn't any permission about it, in fact, although it was attempted—I should explain here—at the time of the NRA, in the glass container industry we all remember that there was an effort to raise wages and the smaller concerns complained bitterly about that, stating if they did have to raise their wages to the same rates that the larger concerns paid, they would not be able to compete with the larger con-
[fol. 3883] cerns, so that the industry was encouraged to set up some sort of regulation which would enable the smaller concerns to get their proportionate share of the business. And with the encouragement of the NRA, our industry set up a code authority, made a survey of the industry,—which wasn't necessary, because they were doing that most of the time anyway, they had those figures,—but as I recall it they made a new survey and based on that survey plants were given a certain quota. That quota really represented volume of production or business compared with the rest of the industry.

Q. And that was the regulation of the percentage which that concern was supposed to stick to in its production, in relation to the rest of the industry; is that right?

A. I cannot remember the exact details of that. There never was any enforcement. I believe the purpose of that was, since there wasn't enough business to go around, to make sure these smaller concerns got their share and were able to raise wages.

Q. They couldn't get their share if the others didn't stick to their quotas, could they?

A. That would be true.

Q. I ask you now as to the date of it,—I direct your attention to the date of this exhibit, July 3, 1935. That was subsequent to the end of the NRA Code, wasn't it?

A. I cannot recall the exact date it expired. I do recall that for months afterwards no one knew exactly what to do. We were encouraged to retain the idea of the NRA, and, [fol. 3884] furthermore, we had been talking and complaining and squabbling about quotas,—nobody being satisfied with what the code authority had given them,—for several years. So that about this time the word became synonymous with volume of business. We got so used to using it we just kept on using it.

Q. After the NRA ended, the code authority came to an end; isn't that right?

A. I cannot recall just when the code authority came to an end.

Q. Who set these quotas after the end of the code authority?

A. There were none set after that.

Q. You mean to tell me the quotas weren't maintained after the end of the code authority?

A. The quotas were not maintained, that is correct; never were maintained.

Q. Are you sure of that?

A. The real action of the quotas during the NRA, instead of curbing competition they increased competition.

Mr. Apsey: At this time I will offer in evidence as Government's Exhibit 810, photostatic copy of a memorandum by the witness, addressed from Capstan to Anchor, subject, "Diamond Glass Company", dated October 21, 1935, stipulated as genuine by Anchor-Hocking at page 5 of its stipulation.

If the same objection is made to this, we are only concerned with the last paragraph on the first page and the first paragraph on the second page, relating to quotas.

(Thereupon short recess taken.)

[fol. 3885] Mr. Goodrich: If the Court please, just as recess took up Mr. Apsey inquired if the same objection is made to the paper about to be offered. I wish to state that the same objection is made.

Mr. Apsey: We offer only the last paragraph on the first page, and the first paragraph on the second page. The last paragraph on the first page has to do with quotas, and the first paragraph on the second page has to do with another of the defendants in this case, Mr. Dilworth.

The Court: Now wait just a minute. Now this is the document of July 16th, 1935?

Mr. Apsey: No, October 21, '35. I am going to mark the two together. I might as well offer them together. I think it will save some time. The July 15th, '35, document has been marked Exhibit 811, that is a memorandum signed by the witness from Capstan to Anchor, stipulated as genuine by Anchor-Hocking at page 5 of the Stipulation. We want that offer for the whole of the first page, and first paragraph on the second page.

* * * * * * *

[fol. 3886] The Court: That will be admitted over your objection.

Mr. Fuller: May I be heard just a moment, if your Honor please?

The Court: Yes.

Mr. Fuller: With respect to Exhibits 810 and 811, as was pointed out earlier, there is nothing in the pleadings whatsoever in respect to the acquisition of the Diamond Glass Company. I understood that that resulted in government's counsel limiting their offer with respect to certain offers of these documents, and now if that be true, and it was stated as having to do with quota, therefore with respect to Exhibit 810 I request that the offer be limited to the first sentence in the last paragraph on page 1, which is all in the exhibit that has to do with quota, "We all agree the additional quota would be very valuable, et cetera". That is the only sentence in the exhibit that has anything to do with quota, and that is the basis of request as to that part of the exhibit. As to the second portion of the exhibit, which is the second paragraph on page 2, the basis of the offer as I understand government's counsel is that it refers to Mr. Dilworth who

is a defendant in this case. If there is nothing there as I [fols. 3887-3889] see it which is admissible as to Mr. Dilworth at all, or is competent as to Mr. Dilworth, in view of the fact that this transaction is not mentioned in the pleadings at all, and in fact was never consummated. The basis of my objection with respect to Exhibit 811 is the same, namely, that the transaction is not mentioned in the bill of complaint, and if it be quota, as counsel has stated it is, which is the basis for the offer, then I ask that it be limited thereto to the paragraph in the middle of the page headed "Quota".

The Court: I don't know what counsel intends to offer in 811. I haven't given that any attention. I don't believe he has indicated.

Mr. Fuller: I was simply attempting, if Your Honor please, to meet counsel's suggestion as to the basis why this was offered. I submit the exhibit is entirely incompetent except on the issue of quota, and if it is to be offered on that basis then I request it be limited to the portion dealing with quota.

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[fol. 3890] Mr. Apsey: I will offer Exhibit 811 at the present time also. Exhibit 811 was a memorandum from the witness from Capstan to Anchor dated July 15th, 1935, stipulated as genuine by Hocking, subject "Diamond Glass Company".

Mr. Rose: We object to that.

Mr. Apsey: We offer the first page on that, and the second page down to the heading called "Prices".

Mr. Fuller: If Your Honor please, may we have our same objection to 811 as to 810?

The Court: Yes. You are offering the first paragraph?

Mr. Apsey: No. The entire first page and the second page down to the heading "Price".

The Court: It may be admitted.

Mr. Apsey: I am going to ask my associate to read first Exhibit 811, the first page, and on the second page down to the heading "Price".

(Mr. Lewis reads that portion of Exhibit 811.)

Q. You heard that read, Mr. Rieman?

[fol. 3891] A. Yes.

Q. You wrote that memorandum? I will show you the original.

A. That is right.

Q. Does that memorandum refresh your recollection that the quota system was in operation before the NRA?

A. It does not mean that the quota system as you are expressing it was in operation before the NRA.

Q. The quota system I said.

A. The quota system.

Q. Didn't you say here since the quota system was in operation years before the NRA?

A. That letter was written to the president of my parent company, and I did not need to go into explanation what that meant. What that meant was the industry for years before the NRA period had suffered from a very serious over-production, and naturally it was the principal subject of discussion when any of the glass manufacturers gathered together as to what were the best means of meeting a condition of this kind.

Q. What was the——?

A. I will finish my explanation, if you please. As ways and means of meeting it naturally the first thing came to their mind was to get increased volume of sales by building up new fields and finding new ways and means of using glass for packaging. Then, of course, in discussions we hear lots about when an industry is running sixty per cent [fol. 3892] the members of that industry can't expect to operate one hundred per cent. In fact and for years if anyone had tried it a couple of the major concerns could have produced all the glassware that was necessary. There was sort of a doctrine in there. Some of the companies conceded it was a sound business doctrine. Our company conceded that it was sound to look over the Glass Container figures which were furnished to us, find out where we stood in relation—in the glass container industry—showed as a whole it was running about 60 per cent, and our factories were running at about 65 per cent; under conditions like that prices would be extremely close, of course. It became a question of whether we should step out and try to build up our factory. Naturally, having those figures there and realizing if we did it we would have to sacrifice a little in price. We decided from a plain business standpoint we would not want that extra business at prices below our

cost. That Mr. Stewart understood because we discussed it often.

Q. These matters were discussed continuously during the meetings of the major companies?

A. The fact it was over-produced and was running at a low capacity was certainly a major topic of conversation.

Q. During those conversations I suppose it would be [fol. 3893] necessary for the major companies to agree to limit their proportion of production if there was over-production at any time?

A. They never agreed to anything, and the doctrine was never even adhered to except to the extent that I have just mentioned, individual concerns like our own figured we did not want business that was below cost.

Q. Your own concern considered it necessary to adhere to the limitation that was set at those meetings?

A. We did not consider it necessary.

Q. Why in that event was it necessary to acquire this Diamond Company in order to get more quota. You say here the main thing we will be buying would be quota?

A. I was thinking in terms of NRA even though it was over. We always were told there would be some substitute certainly under conditions like that. We would not think of buying a factory if the Code Authority was telling us we would get that business or not.

Q. The Code Authority was over at that time?

A. Certainly. We did not know what was coming and we had been warned even something more stringent would follow after that, and this quota idea was a hangover for a while.

Q. This system you say had been in operation for years before the NRA, is that true?

A. That is not true, no. That statement as you put it is not true. Just as I explained, Mr. Stewart understood [fol. 3894] the doctrine I stated there.

Q. The quota system, as you say, was in operation years before the NRA?

A. Not to my knowledge.

Q. And didn't you say for years there had been meetings with the major companies where the question of limiting production had been discussed?

A. Not limited production, never.

Q. What was this quota system that was discussed?

A. As I explained before, it was a discussion of our problem, which was over-production; and the doctrine developed that some of the major concerns, and our concern I can say adopted it, that we did not want to run at full capacity in a period of depression. The figures we got from the Glass Association showed that the industry as a whole was running under capacity.

Q. If you acquired another company, such as the Diamond Glass, that had an additional quota, then you would feel free to produce up to that additional quota?

A. Quota became a slang word, meaning the volume of production and sales. I was trying to make a profit for our two glass factories. If we could have gotten this $600,000 more volume of business and put it in that Salem factory, and operated it closer to capacity, it would have helped the earnings of our company.

Q. You would not have felt free to operate the existing company at full capacity if the quota limited you below that?

[fol. 3895] A. It never affected us in any way, shape or manner.

Q. You thought you ought to go out and acquire a company and that would give you more quota?

A. That was the case if the NRA was continued, so that the Code authority would still have authority over such matters.

Q. For how many years before the NRA had this conference you have been talking about regarding quota questions been going on?

A. The Glass Container records will indicate that the industry as a whole was at over-production for many years; so that that problem of over-production has been one that has been discussed; and it has always been a major topic of discussion.

Q. Back as far as 1920, would you say, when you started in the glass field?

A. I can't recall. I don't know whether the Glass Container Association existed then.

Q. In 1925?

A. I can't recall exactly when they started.

Q. Would you say it was 1928?

A. I cannot answer that question.

Q. You can certainly say whether it was before or after 1930, can you not?

A. The NRA period was from '33 to 1935.

Q. So if it were years before the NRA, it would certainly be before 1930?

A. Do not forget that I wanted this volume of sales; and [fol. 3896] I was putting up sales arguments to my superior.

Q. You said at this meeting these concerns would look over statistics and determine what the production situation was: who furnished those statistics?

A. The Glass Container Association.

Q. These meetings that were held: where were they held?

A. Usually at the rooms of the Association, or in the adjoining rooms of the management corporation or management company that was running the Association. That was the Stevenson Corp.

Q. The meetings you referred to were meetings of the Glass Container Association?

A. Yes; but informal meetings. Naturally a subject like this, that was a very difficult one, they would discuss at any time the glass men got together.

Q. The quota figures that were determined upon: were they the same figures that were sent out in the reports of the Container Association to its various members?

A. I cannot say for certain on that point. I would not remember.

Q. You further state here in your statement that I have just read, after saying the quota system was in operation years before the NRA, "and since at the past meeting all of the major concerns were still in favor of maintaining it",——

A. That was simply my opinion at the time, and just exactly what concerns gave me that information, I cannot recall at this moment.

[fol. 3897] Q. You were at the meeting, were you not?

A. I attended most of the meetings.

Q. Who were the major concerns represented at that meeting?

A. I think all of the major concerns would have been there. What ones gave me this information, I cannot recall.

Q. The Hazel-Atlas Glass Company would have been there?

A. They would have been there.

Q. Owens-Illinois would have been there?

A. They would have had representatives there.

Q. Your own company, the Anchor Cap Corporation?

A. Yes, sir.

Q. The Liberty Glass Company: were they members?

A. I cannot recall whether they were members or not.

Q. Ball Brothers?

A. They may have had; I don't know.

Q. Were not Ball Brothers usually represented there?

A. They were not quite so regular attendants as some of the others; so I cannot say.

Q. How about Thatcher?

A. They probably had a representative there.

Q. And the Hocking Glass Company?

A. They also probably had a representative there.

Q. They were the major concerns in the industry, were they not?

A. Yes, they were.

[fol. 3898] Q. You refer here to a meeting where it was determined, where the major concerns stated they were still in favor of maintaining it. Of course that meeting took place after the end of the Code Authority, did it not?

Mr. Goodrich: May I interrupt just a moment? As I heard the question, Mr. Apsey read that the major concerns stated they still were in favor of it. I am sorry to interrupt, but that is not in the memorandum, which I take to be a reflection of the witness' impression; and I don't think the word "state" should be put into his mouth.

Mr. Apsey: I will change the question.

Q. Referring to your language, "and since the quota system was in operation years before the NRA, and since at the past meeting all of the major concerns were still in favor of maintaining it"—I will ask you whether that meeting took place after the end of the Code Authority in May of that year?

A. I really cannot recall that.

Q. No question could have arisen, could it, as to whether the matter should be continued, if the Code Authority was still in effect?

A. It might have arisen, because the quotas were never enforced, even with the help of government approval; even during the NRA period they did not work out; so, naturally, after that they would not have, either.

Q. You nevertheless considered it necessary, did you not, to acquire other companies in order to increase your quota?

[fol. 3899] A. Not to increase our quota; unless you are using the meaning of the word "quota" as volume of business, with which the word became more or less synonymous. It became synonymous in our use; a slang term for volume of production or volume of business. We wanted it. We were running two glass factories at less than capacity. This would have helped us to show a better profit.

Q. When you say running factories at less than capacity, you mean at less than their production capacity?

A. That is right.

Q. Now I will direct your attention to Government's Exhibit No. 600, which is a statement of the Glass Container Association. This one happened to be made to the Knox Glass Associates, dated July, 1935. I will ask you whether this is the same type of report which your company received from the Glass Container Association?

A. Yes, it is.

Q. You notice down here under the report of tonnage—first of all, I call your attention to the heading "Your Forecast"; and under the column "Production", a certain amount; "Shipment", a certain amount; then another heading "Your Actual", and under the column "Production", a certain amount; and under "Shipment", a certain amount; and Your Forecast of Percentage to the Industry. Did your forecast represent the quota amounts which were set up by the Code Authority?

[fol. 3900] A. It may have; I don't just recall about that; but I believe it was set up by the Code Authority to represent the percentage which the Code Authority had set up for each concern.

Q. How long did your company continue to receive reports in this form?

A. I cannot recall when they were discontinued; but there was a hang-over at some period when the same form was followed out.

Mr. Fuller: When you refer to your company, do you mean the Capstan Company?

Mr. Apsey: Yes, I mean the Capstan Company, or the Anchor-Hocking of Pennsylvania, which is the name it later took on; as long as the witness was with that company.

A. What is the question?

Q. Does it change your answer for any specific company?

A. No, it does not change my answer.

Q. As a matter of fact, the reports received in this form continued to some time in 1939, is that not right?

A. I cannot recall the date. That is a matter of record. I cannot recall when the form was changed.

Mr. Apsey: I am going to ask my associate to read Government's Exhibit No. 810, the portion in evidence, being the last paragraph of the first page, and the first paragraph on the second page.

Thereupon, a portion of Government's Exhibit No. 810 was read by Mr. Lewis, of counsel for the government.

[fol. 3901] Q. You will notice in the first part of this that was read that there was a reference to negotiations with Hartford-Empire. It says here:

"As you know, I offered them $75,000 in stock with the possibility that this might be increased to $100,000, depending upon our negotiations with Hartford-Empire."

What were those negotiations?

A. I cannot remember.

Q. What connection did the Hartford-Empire Company have with your proposal to acquire the Diamond Glass Company?

A. I really cannot recall what this could have been about.

Q. Was it necessary to consult them before you could acquire another company?

A. Possibly, to find out what equipment they had; I cannot think of any other reason.

Q. Apparently this negotiation had some effect upon the stock which you would offer for the assets of the Diamond Glass Company?

A. To my best recollection, that was to find out how much of that machinery had been paid for. A certain part of it, I believe, had been. The more it was paid for would reduce the net amount of the cost to us.

Q. Do you remember that, or is it just your present opinion?

A. That is the best of my recollection.

[fol. 3902] Q. I refer you to the paragraph on the second page of this exhibit, which says:

"Mr. Dilworth also believes it is very important to try to put this deal across and suggests that it might be better to go to Mr. Foster direct."

Who was Mr. Dilworth?

A. Mr. Dilworth was a vice-president of our company, and he had been the owner of the Salem Glass Works before we bought them out.

Q. Is that the same J. D. Dilworth who is a defendant in this case?

A. Yes, sir.

Q. You conferred with him with respect to this acquisition?

A. According to that letter, I did.

Q. Is he one of the persons referred to in the statement: "We were all agreed that the additional quota would be very valuable"—

A. I would not know.

Q. He was one of the ones with whom you consulted about this matter?

A. I certainly talked the matter of the acquisition of the Diamond Glass Company over with Mr. Dilworth.

Q. He believed it was very important to try to put it across?

A. He was favorable to acquiring that additional volume of business.

[fol. 3903] Q. There were other concerns besides the Diamond Glass Company and the Hart Glass Company which from time to time your company considered acquiring, is that not right?

A. As a part of our program to get middle west and eastern factories, we were always on the lookout for an opportunity.

(Noon recess.)

[fol. 3904] (At 2 o'clock p. m., Thursday, April 17, 1941, the trial was resumed.)

Mr. McCallister: Your Honor, I don't know that this is an appropriate time, but I ask you to consider two affidavits which I am passing up in connection with a subpena that has been served on Mr. F. C. Ball. The affidavits are to the effect that his physical condition is such that it would be dangerous for him to make the trip and testify here. We are

not suggesting that he do not testify in the case, but we are rather suggesting it be by deposition form if at all, and our petition is that the subpena be withdrawn at least to the extent I have outlined, and I believe Mr. Isseks is in agreement with me on that point.

Mr. Isseks: Not entirely, Your Honor. In view of the affidavits, the Government is not going to insist on Mr. F. C. Ball appearing at the trial. We have notified counsel for Ball Brothers that we intend to offer, in lieu of Mr. Ball being here, testimony in the nature of admissions made by him before the TNEC. We do not intend to take his deposition at the present time. We may change our mind if Your Honor rules the admissions are inadmissible. We feel, in view of the case of the United States against Pan-American Petroleum Company, where admissions of Mr. Doheny before a senate committee were offered in a civil suit in equity by the United States Government against Pan-American Petroleum Company, and others, those admissions were offered and admitted, and we feel the admissions are ad-
[fol. 3905] missible here. I am not arguing the point now, Your Honor; I am simply pointing out we do not intend, at the present time, unless Your Honor holds these are inadmissible, to take Mr. Ball's testimony. In fact, if he would come here we would ask him the same kind of questions asked there, and if he cannot come because of no fault of ours, we will try to get the admissions in, if they are admissible; if they are not, we will have another problem.

Mr. McCallister: I don't think Mr. Isseks intended to imply there was any understanding between us and him, and we reserve the right to question the admissibility of the admissions.

The Court: Cannot an agreement be arrived at between counsel?

Mr. McCallister: Beg pardon?

The Court: Could you agree on the major part of the testimony that has been offered by Mr. Ball before the TNEC? If there are some questions in dispute, perhaps you could agree upon all except those particular questions and if the deposition was taken it may be so limited to those particular questions.

Mr. Isseks: We are not interested in taking his deposition at all, unless Your Honor rules the admissions are not admissible. We are now relying on the United States vs.

Pan-American Petroleum Company case. We are perfectly willing to enter into a stipulation. They have suggested a stipulation as to his testimony with the qualification that [fol. 3906] the answers he gave there are incorrect. We cannot agree to that.

Mr. McCallister: Following Your Honor's suggestion, there is the major part of that testimony we would raise practically no question about; however, there is one answer, or maybe one or two answers, that were given without due consideration to the facts, and given many years after the situation involved, and if those admissions were in here we would have to explain the situation. Therefore, we could not stipulate the admissions in, you see, without the explanation.

The Court: It would be very fortunate if counsel could stipulate on the matter.

Mr. Isseks: We would be perfectly willing to stipulate with counsel that Mr. F. C. Ball's testimony was as given before the TNEC, and if they would like to take his deposition to explain the admissions, they can take it, if Your Honor would permit the taking of the deposition. But our present position is he testified on a very narrow issue as to a specific question, gave a very flat and unequivocal answer, with plenty of time to explain, and he testified in 1938,—only five years from the event,—rather than today,—three years further.

Mr. McCallister: May I make one suggestion? We would be afraid to enter into such stipulation, because, as these affidavits indicate, this prospective witness is 84 years of age. If we should stipulate, with the thought we would take his deposition, we might never have the opportunity of [fol. 3907] taking that deposition. Therefore, it is not tenacity to our point that prevents us from entering into the stipulation, it is merely that we are afraid we would place our client in a disadvantageous and improper position.

The Court: Could you not enter into the stipulation with the understanding it is not to be filed until the deposition is taken?

Mr. Isseks: That is all right.

Mr. McCallister: Let's consider that.

The Court: You are going to have a lot of time in the month of May where that might be done.

Mr. Isseks: All right, Your Honor. The only thing we have in mind, as I have indicated, is that they would stipu-

late that was the testimony, and they can make any point they want. My only point is they had this all up in 1938, with plenty of opportunity to explain it, and they can take any deposition they want, at any time during the month of May.

Mr. McCallister: It is suggested that if we had to take it right now we could not, because his health is such we couldn't even take his deposition at the moment; but let us consider your suggestion.

The Court: I think you should give it consideration.

Mr. McCallister: I wonder if it would not be a good idea to introduce these in the record as part of the record.

[fol. 3908] Mr. Isseks: I don't want to encumber the record. I think they may be filed.

The Court: I think they may be filed. I don't think it would be necessary to introduce them as an exhibit.

Mr. McCallister: I am perfectly willing.

Mr. Isseks: Between now and the proposed recess, counsel for Ball Brothers and the government will attempt to work out a stipulation along the lines suggested by Your Honor.

Mr. Middleton: May I suggest the other counsel are interested in the subject of the proposed stipulation concerning Mr. Ball's testimony. We would, of course, have to be consulted on that, because it has a bearing on their case. I think it is only fair to say to the Court we very much dislike the proposal to stipulate any part of Mr. Ball's testimony from the TNEC hearing. We don't believe the testimony there should be brought into this case, for a great many reasons, which I think are perfectly obvious.

Mr. Isseks: It was my intention, the government's intention, to offer next week the admissions made by Mr. Ball before the TNEC. In view of the statement made by counsel for Owens, it seems to me perhaps we ought to go along.

The Court: Of course it is quite clear if counsel for Ball Brothers was to take the deposition of F. C. Ball for the purpose of explaining his testimony before the TNEC, [fol. 3909] counsel for Owens, and every other defendant in the case, would have ample opportunity to cross-examine at length.

Mr. Isseks: It seems to me if we could work out a stipulation we would defer taking a deposition. We are trying hard to get in as much testimony before May 2nd as we can. I

am willing to defer it until after the recess. I don't want to get into any controversy if I can avoid it.

The Court: If you can save the Court any work on the matter, we would certainly appreciate it.

Mr. Isseks: Thank you very much.

The Court: Proceed.

(Further examination of G. Fred Rieman.)

Q. I believe you testified, Mr. Rieman, that there were several attempts to acquire other glass companies in your effort to expand on the west coast or in the western part of the country?

A. Middle west.

Q. In that connection did Mr. Levis, of the Owens-Illinois Glass Company,—William E. Levis,—participate in any of those efforts?

A. I probably consulted with him regarding them.

Q. At this time I show to the witness Government's Exhibit 812 and ask if he wrote that?

A. Yes, I wrote that.

Mr. Apsey: This is a memorandum under date of November 21, 1932, from Capstan to Anchor, subject Obear Nester [fol. 3910] Glass Company, signed by the initial "R", and stipulated as genuine at page 3 of the Anchor Hocking stipulation. I now offer it in evidence, Your Honor.

Mr. Middleton: There will be objection until we find out what it is about.

Mr. Goodrich: We renew the same objection previously made, if the Court please, as having nothing to do, outside of the scope of the pleadings.

The Court: Overruled.

* * * * * * *

[fol. 3911] Q. I will ask the witness one question: does this document properly record the facts as you understood them at the time?

[fol. 3912] A. Since this is back in 1932, I recall that I wrote the letter but I cannot recall whether that expresses my understanding of the facts at that time.

Q. It was your custom properly to record the facts when you made memoranda, isn't that right?

A. I would try to.

Mr. Apsey: I will ask my associate, Mr. Lewis, to read this exhibit.

(Mr. Lewis thereupon read Government's Exhibit 812.)

Q. I next call the witness' attention to Government's Exhibit 813, which is a memorandum from Capstan to Anchor, signed "R", under date of November 26, 1932, stipulated as genuine by Anchor Hocking at page 4 of the stipulation.

Q. I will ask the witness if he signed that memorandum?

A. Yes, I did.

Mr. Apsey: I offer it in evidence.

Mr. Middleton: Same objection.

Mr. Fuller: Same objection.

The Court: It may be admitted over objection.

(Government's Exhibit 813 read by Mr. Lewis.)

Q. I will next direct the witness' attention to Government's Exhibit 814, being memorandum from Capstan to Anchor, signed "R", dated December 3, 1932, stipulated as genuine at page 4 of the Anchor Hocking stipulation, and I will ask the witness if he signed that memorandum.

Mr. Middleton: May I be heard a moment? While the witness examines it, may it be understood, the Court please, [fol. 3913] we have a continuing objection to all of these exhibits in connection with the Obear Nester proposed purchase?

The Court: That may be understood.

The Witness: I signed that.

Mr. Apsey: I offer it in evidence.

The Court: It may be admitted.

(Government's Exhibit 814 read by Mr. Lewis.)

Mr. Apsey: At this time, if Your Honor please, I will offer as Government's Exhibit 815, photostatic copy of a letter stipulated as genuine at page 5 of the Anchor Hocking stipulation, from W. E. Levis, signed "Bill", on the letterhead of William E. Levis, addressed to the witness, Mr. G. F. Rieman, under date of July 27, 1934.

Mr. Fuller: Same objection.

The Court: It may be admitted.

(Government's Exhibit 815 read by Mr. Kramer.)

Mr. Apsey: At this time I offer in evidence as Government's Exhibit 816, a letter on the stationery of William E. Levis, signed "Bill", under date of August 2, 1934, addressed to the witness, stipulated as genuine by Anchor Hocking at page 5 of their stipulation.

The Court: It may be admitted.

(Government's Exhibit 816 read by Mr. Kramer.)

Mr. Apsey: No further questions, Your Honor.

The Court: Any questions by the defense of this witness?

[fol. 3914] Mr. Fuller: I have a few, if Your Honor please.

Cross-examination of G. F. Rieman.

By Mr. Fuller:

Q. Mr. Rieman, you testified, I believe, that Anchor Cap Corp. acquired all of the assets, or substantially all of the assets, of the Hocking Glass Corp. on December 31, 1937?

A. Yes.

Q. And that at that time or about that time the name was changed to The Anchor Hocking Glass Corp., is that correct?

A. Yes.

Q. Now, there was also another corporation, I believe you testified, called Capstan Glass Company?

A. Yes.

Q. And that corporation was a subsidiary of Anchor Cap Corp., is that right?

A. Yes.

Q. You were president, general manager, and member of the board of directors of Capstan Glass Corp.?

A. President and general manager of the Capstan Glass Company.

Q. Yes.

A. That is correct.

Q. And also a member of its board?

A. Yes.

Q. Was the Anchor Cap Corp. a member of the G. C. A.?

A. That is the holding corporation?

Q. The Anchor Cap Corp.

A. No, it was not.

[fol. 3915] Q. But the Capstan Glass Company was; is that correct?

A. Yes.

Q. Prior to December 31, 1937, what if any connection did Mr. I. J. Collins have with Anchor Cap Corp. or any of its subsidiaries, including Capstan Glass Company?

A. That is prior to the——

Q. Prior to December 31, 1937, the date of the acquisition of the Hocking assets?

A. No connection.

Q. And prior to December 31, 1937, what if any connection did Hocking Glass Corp., or General Glass Corp., or any of their respective officers, agents or employees, have with Anchor Cap Corp. or any of its subsidiaries, including Capstan Glass Company?

A. No connection.

Mr. Fuller: Now, if Your Honor please, without waiving the objections that were made at the outset with respect to the admissibility of this evidence on direct for connective purposes, I should like to ask a few questions about some matters that were covered, over our objection.

The Court: You may proceed.

[fol. 3916] Q. Mr. Rieman, the Anchor Cap Corporation was not a licensee of Tucker, Reeves & Beatty, was it?

A. No, sir.

Q. Nor was Anchor Cap Corporation a licensee of Hartford prior to December 31, 1937, was it?

A. That is right, they were not.

Q. Anchor Cap Corporation was not a manufacturer of glassware, was it?

A. No, they were not.

Q. Capstan was a manufacturer of glassware?

A. Yes, sir.

Q. Federal Glass Company held an exclusive license from Tucker, Reeves & Beatty on the Tucker, Reeves & Beatty feeders for certain types of ware, did they not,—back in 1920, say?

A. I cannot answer that question.

Mr. Fuller: Maybe I can refresh your recollection.

Mr. Isseks: Your Honor, my recollection is just as counsel seems to indicate. To move matters along, if he will ask for a stipulation, we will give it to him.

Q. My understanding is that the Federal Glass Company had an exclusive license from Tucker, Reeves & Beatty on

Tucker, Reeves & Beatty feeders in the fields of ware set forth as the exclusive field in Schedule C of Exhibit No.——

[fol. 3917] The Witness: Could you remind me of the field?

Q. Yes, I will show it to you: Exhibit 567, which is the general license agreement—I am not sure of the exhibit number.

* * * * * * *

Mr. Isseks: It is No. 808.

* * * * * * *

[fol. 3918] The Court: It is agreed now, subject to correction by the government if found otherwise, that Federal Glass Company was a licensee of Tucker, Reeves & Beatty? Is that your agreement?

Mr. Fuller: That is right; an exclusive license; the same field in which Capstan was.

Maybe we can go further and shorten this up by extending the stipulation to cover this, that that exclusive field was shared by Capstan by an arrangement with Tucker, Reeves & Beatty. That is all I want to prove.

Mr. Isseks: Does the witness know?

The Witness: I recall that arrangement, yes.

Mr. Isseks: It is all right with us.

Mr. Fuller: Thank you.

Q. With respect to the experimental feeders, those were developed by Capstan about when?

A. In 1932.

Q. That was in anticipation of the return of beer, was it not?

A. It was.

Q. Capstan at that time had no rights to use the Tucker, Reeves & Beatty feeders in the manufacture of beer?

A. That is correct.

Q. Hartford had acquired Tucker, Reeves & Beatty prior to that time, had they not?

A. Yes, sir.

[fol. 3919] Nor did Capstan have the right to use Hartford feeders in the manufacture of beer bottles, did they?

A. No, they did not.

Q. Those experimental feeders were developed for what purpose by you?

A. For the purpose of enabling us to get into the manufacture of beer bottles.

Q. About that time litigation was pending between Hartford and the Hazel-Atlas Company, was it not?

A. Yes, sir.

Q. If I suggest to you that those experimental feeders were developed in part against the contingency that Hartford might be defeated in that litigation, leaving you free to use those feeders in the event they did not infringe to make beer bottles; would that be correct?

A. That would have had some influence.

Q. Were the feeders also developed in part for the purpose of being used by Capstan in trading for a Hartford license to make beer bottles?

A. Yes, sir.

Q. Did the Capstan Glass Company, while you were connected with it, ever agree with any other company to limit the volume of glassware which it produced?

A. No, sir.

Q. Did Capstan Glass Company ever agree with any other company as to what price it should charge for its glassware?

A. No, sir.

[fol. 3920] Q. With respect to these acquisitions, you have testified, I believe, that some time in 1932, or thereabouts, you came to the conclusion that you wanted a midwest plant: that is Capstan I mean?

A. We did not come to it at that time; it was part of a program.

Q. Did that program have something to do with the return of beer and the reopening of the beer bottle field?

A. There may have been some connection.

Q. What if anything did Mr. Levis have to do with your reaching that decision?

A. Reaching what decision?

Q. The decision that you should acquire a midwest plant?

A. He had nothing to do with reaching that decision.

Q. Did Hartford-Empire have anything to do with that decision?

A. No, sir.

Q. Did Owens-Illinois Glass Company have anything to do with that decision?

A. No, sir.

Q. As a matter of fact, the Diamond Glass Company was not acquired by Capstan, was it?

A. No, sir.

Q. Nor was the Hart Glass Company acquired by Capstan, was it?

A. No, sir.

[fol. 3921] Q. And Obear-Nester was not acquired by Capstan, was it?

A. No, sir.

Q. So that all of your suggestions with reference thereto came to naught, is that correct?

A. That is right.

The Court: Are there any further questions on behalf of the defendants?

Mr. Rose: If Your Honor please, I have a few questions.

Cross-examination.

By Mr. Rose:

Q. Mr. Rieman, were you ever an officer or a director of the Glass Container Association?

A. I was never an officer, nor to my recollection was I a director.

Q. As I understood it, in answer to a question Mr. Fuller just put to you, you stated that the Capstan Glass Company was never party to any agreement or understanding limiting its production. Now I call your attention to the fact that you testified on direct examination concerning meetings with various manufacturers—I think the time was prior to the NRA—at the offices of the Glass Container Association, at which the question of over-production in the industry was discussed? At any of those meetings at which you were present, do you recall that any agreements or understandings were entered into by any of the companies present fixing percentage totals of industry production and allocating them to particular companies?

[fol. 3922] A. There were not.

Q. You also referred to the effort of the Code Authority during the NRA period to set up a so-called quota system; and you mentioned the fact that you knew that the NRA had been declared unconstitutional some time in 1935. Do you recall about when that was?

A. No, I do not.

Q. Would the date of May, 1935, seem approximately correct to you?

A. It was some time along the middle of that year; I can't recall.

Mr. Apsey: We will stipulate that it was in May, 1935.

Q. You spoke of recalling that there were discussions of substitutes for the NRA for some time subsequent to that?

A. That is correct.

Q. Do you recall those discussions?

A. Yes, sir.

Q. I call your attention to Government's Exhibit 811, and to the statement therein that the quota system seemed likely to continue. When you made that statement in Government's Exhibit 811, did you have reference to those discussions concerning the possible substitutes for NRA?

A. Yes, I did.

Q. Did the quota system in fact continue?

A. No, it did not.

[fol. 3923] Q. I show you Government's Exhibit No. 600, which was introduced when Mr. Underwood was on the stand.

Mr. Rose: Your Honor recalls that was the statistical—may I have No. 601 for just a minute?

(Document handed to Court.)

Mr. Rose: It is similar to that.

Q. I believe you said the Capstan Company received statements which, while the figures on it were different, were similar in general set-up to that?

A. That is right.

Q. I call your attention to the fact that at the top of the sheet there was an item described there as your forecast percentage. Did you regard that forecast percentage as limiting or in any way restricting the production or shipments of the Capstan Glass Company?

A. I did not.

Q. I believe you said you recalled that at some time subsequent to the NRA, the Glass Container Association changed the form of those statistical reports and eliminated the forecast percentage, to which I have just called your attention?

A. That has been eliminated.

Q. But you do not recall just when that was?
A. I cannot answer that, no.

The Court: Are there any further questions?
Mr. Goodrich: I should like to ask a question or two, if I may.

[fol. 3924] Cross-examination.

By Mr. Goodrich:

Q. What kind of license was your Tucker, Reeves & Beatty license, unlimited or restricted?
A. Restricted.
Q. Do you remember now what you were permitted to make under that license?
A. There was a long list of exclusive items and a list of non-exclusive items.
Q. I suggest packers' ware and tumblers.
A. Packers' ware and tumblers were the principal items, yes.
Q. You could not make beers on those feeders?
A. No, sir.
Q. You could not make liquors?
A. No, sir.
Q. Later on in 1920 Tucker, Reeves & Beatty increased it so that you could make some screw thread finished wide mouth containers and packers' ware of a different size?
A. Yes, sir.
Q. Later on, in 1923, they enlarged it so that you could make some jars and jelly glasses?
A. Yes, sir.
Q. In 1924, they gave you some further rights to make bottles and jars of certain sizes?
A. Yes, sir.
Q. But you could not make beverages?
A. No, we could not.
Q. You could not make beers?
[fol. 3925] A. That is right.
Q. You could not make liquors?
A. That is correct.
Q. Nor certain types of proprietary medicine bottles?
A. That was also an exclusion.
Q. Nor milks?
A. That is right.

Q. Besides some other exclusions which we will not go into, that was the state of your license at the time Tucker, Reeves & Beatty sold to Hartford, was it not?

A. Yes, sir.

Q. Hartford took over your license and left you in about the same fields, did it not?

A. Yes, sir.

Q. Practically no change?

A. No, sir.

Q. So that you were licensed by Hartford for almost exactly what you had from Tucker, Reeves & Beatty?

A. That is correct.

Q. Later on you requested enlargements of Hartford; first, the beers, was it not?

A. Yes, sir.

Q. The beers: to be frank, you were fighting with every weapon that you had to get them?

A. Yes, sir.

Q. One of the weapons you used was the experimental feeder?

A. Yes, sir.

Q. It was a plunger feeder?

[fol. 3926] A. Yes, sir.

Q. There never was any doubt in your mind but that it was probably an infringement of the Hartford feeder?

A. I suspected that it was an infringement.

Q. Hartford told you that it was an infringement?

A. Yes, sir.

Q. You wanted the beers so bad, with that market opening up, that possibly you would have been willing to risk an infringement to make beers?

A. I was willing to risk a lawsuit, yes.

Q. The fact is that you developed the feeder for trading purposes, did you not?

A. That is correct.

Q. It was used very successfully?

A. Yes, sir.

Q. You never had any intention of exploiting it, selling it on the market?

A. We had no intention of getting into the feeder or licensing business.

Q. Do you know whether at that time beer licenses were granted to others by Hartford as well as to yourself?

A. I cannot answer that question.

Q. Later your license was enlarged so that you could make liquors of various types?

A. Yes, sir.

Q. Were there any extensive negotiations required for that?

A. Not for liquors.

Q. The fact is that you got everything from Hartford you [fol. 3927] ever asked for, did you not?

A. We fought for it and got it.

Q. Shortly after you took a license from Hartford, I believe the Hartford engineers came to your plant and went over it, did they not?

A. Yes, sir.

Q. Did they prepare for you, after the examination of your plant, reports incorporating suggestions for improvements in operation?

A. They did.

Q. Did they work on your machines?

A. Mainly on feeders, yes.

Q. What did they do to the feeders?

A. They suggested improvements.

Q. As a matter of fact, they made improvements on them, did they not?

A. They made improvements, yes.

Q. Were they extensive improvements?

A. Very extensive, yes.

Q. They added new spouts for you, did they not?

A. Yes, sir.

Q. And they put on some shear mechanisms?

A. Yes, sir.

Q. What else did they do to the machines, do you remember?

A. They modernized them and brought them up to date.

Q. Would you say they improved them?

A. Yes, sir.

Q. To any great extent?

[fol. 3928] A. Very much so.

Q. Is there any question in your mind but that they had an increased efficiency after the engineers worked on them?

A. They did.

Q. Did you at that time have an engineering department at Capstan?

A. Yes, sir.

Q. Extensive or small?

A. Small.

Q. Did you have a research department?

A. No.

Q. In your opinion were engineering and research necessary to the operation of your business?

A. Yes, sir.

Q. Where did you go to get that, Mr. Rieman, at that time?

A. We went to the best places in every department we could—laboratories, et cetera.

Q. Did you call on Hartford for that service?

A. Yes, we did, from time to time.

Q. Both in the research and engineering end?

A. Yes, sir.

Q. Did you find the service available to you?

A. Yes, it was available.

Q. Was it satisfactory to you?

A. Yes, it was.

Q. There has been a lot of talk here about your buying other plants. Have you given your real reasons for looking [fol. 3929] around for expansion; or, rather, have you any further reasons you wish the Court to know?

A. The major reason for looking for expansion was that we started as Cap Closure manufacturers. We could see that the cap closure business was not going to continue profitable, and that if we were to maintain our profits we would have to expand in the glass end of the business.

Q. What consideration led you to believe it would be advantageous to have plants in three parts of the country?

A. The development of the glass business and transportation made it important to have plants well situated.

Q. What has been the trend in demands of glass buyers with respect to the transportation of glass?

A. There has been a considerable demand for truck deliveries and quick deliveries, which require the plants so situated that they can give that service.

Q. Did you feel there was enough business within a favorable trade neighborhood of your plant to keep you going?

A. There was not in the original location of Capstan at Connellsville.

Q. Consequently you felt it was desirable to spread out over the country?

A. That is right. We wanted an eastern and middle west plant.

Q. With respect to any of these proposed purchases of [fol. 3930] yours, did Hartford have anything to do with the matter at all?

A. Nothing whatsoever.

Q. Did it offer to put up any money?

A. No, sir.

Q. Did it in any way urge you to make the purchases?

A. No, sir.

Q. It had nothing to do with it at all?

A. That is correct.

The Court: Any further questions?

Cross-examination.

By Mr. Middleton:

Q. Mr. Rieman, you were president of Capstan, I believe, as early as 1923, were you not?

A. Yes, sir.

Q. A little after that, you were president at the time in 1924 that Hartford and Owens entered into what is known as their 1924 agreement, were you not?

A. Yes, sir.

Q. You knew at that time they had made an agreement, did you not, or shortly thereafter?

A. I knew there was an agreement, yes.

Q. That was given publicity, was it not, in the literature that came to you and to others in the glassware industry?

A. It was one of those things I knew at the time, and have known since, but I cannot be exact as to where I got the information.

Q. But it was rather general information in the glass industry?

[fol. 3931] A. Yes, it was.

Q. I am handing you "The Glass Worker" for May 17, 1924, and ask you whether at some time near that date you saw the notice which is published there?

A. I undoubtedly saw that.

Mr. Isseks: There is no objection. We offer it in evidence, if he does not. I have not had a chance to read it; but I offer it sight unseen. You may read it into the record.

Mr. Middleton: We will have photostatic copies made, Your Honor. I have only the one copy.

We will allow it to be marked, I think, as Exhibit O-5072.

[fol. 3932] Mr. Middleton: I am just offering the one page which the Court said might be photostated.

Q. I call your attention, Mr. Rieman, to this article again, which is now identified as Exhibit O-5072, and ask you whether it does not inform you and others who read it that subsequent to the execution of the agreement between Hartford and Owens, and by virtue of that agreement, the licensees of Hartford received the benefits of the Owens inventions?

A. That is correct.

Q. That was your understanding at the time, wasn't it?

A. Yes. It was, now that this has refreshed my memory.

Q. So that any license that you procured from Hartford after the 1924 Owens-Hartford agreement, would carry those benefits to you, as you understood it?

A. That is correct.

Mr. Isseks: May we have that read, please?

(Mr. Middleton reads Exhibit O-5072.)

Q. Now, Mr. Rieman, following the execution of the contract between Hartford and Owens, publicity concerning which was contained in the article just read, you understood, in a general way, did you not, that Owens was receiving money in the way of division of income of Hartford?

A. I did.

Q. And that that might have had the net result, then, of Owens paying a different or lower net rate of royalty on machines it used?

A. Yes, I did.

[fol. 3933] Q. You understood that as early as late 1924 or early 1925, did you not?

A. Yes.

Q. And from then on at all times it was rather public knowledge, was it not?

A. Yes. It was.

Q. You took that into consideration, didn't you, Mr. Rieman, when you executed with Hartford-Empire the general license agreement between Capstan and Hartford which was dated February 17, 1926?

A. I recall that they were one of the exceptions noted there.

Q. In the favored nation clause?

A. That is right.

Mr. Middleton: The contract I refer to is identified in this case as Exhibit 808 and I refer Your Honor particularly to Section 8 thereof entitled: "Royalties", which has been commonly referred to as "favored nation clause".

Q. To refresh your recollection, Mr. Rieman, I will read just a small portion of that Section 8. The first sentence provides for the payment by Capstan of royalties to the licensor, Hartford, at rates for the respective items of ware provided in Schedule "D" attached. And then it says,

"Provided, that in case the licensor shall at any time during the continuance of this agreement grant to any other person, firm or corporation, the right to use any of such licensed machinery (or the Hartford single feeder, or a feeder of substantially the same construction as said [fol. 3934] "Hartford single feeder) under substantially similar circumstances and conditions at rates of royalty lower than those required by this agreement to be paid by the licensee for such licensed machinery when producing a given article of ware, the licensor will thereupon promptly notify the licensee thereof and so long as such lower rates are in effect, will also give to the licensee, the full advantage of such lower rates for such ware upon such licensed machinery. The royalty rates now being paid or payable under contracts in force October 3, 1925, by Monongah Glass Company, of Fairmont, W. Va., Beechnut Packing Company, of Canajohara, N. Y., Corning Glass Works, of Corning, N. Y., and the Owens Bottle Company, of Toledo, Ohio, shall neither of them be considered as coming within the foregoing proviso or as constituting such lower rates."

That is what you referred to as the favored nation clause?

A. Yes.

Q. Just what did you understand that to mean, so far as Owens was concerned?

A. I realized when we made that contract that Owens were an exception to it.

Q. And if by reason of the 1924 Hartford agreement Owens received a different, or lower, rate of royalty, you

would have no complaint under that provisions; is that right?

[fol. 3935] A. That is right.

Q. And it would not be a violation of your agreement with Hartford?

A. That is correct.

Q. You have never made any complaint, have you, Mr. Rieman, because Owens received a different or lower rate of royalty?

A. We have not.

Q. With respect to the Hartford license?

A. That is correct.

Q. When I say "you" I mean that during the time you were connected with Capstan and were president of Capstan, you made no such complaint?

A. That is correct.

Q. Referring, Mr. Rieman, to 1932, two or three letters have been introduced concerning the possible purchase of stock in Obear Nester Company, and Mr. Wyss is referred to in them. I refer particularly to Exhibits 812, 813, and 814. In Exhibit 812, which is dated November 21, '32, written by you and addressed to Anchor, you start out by saying, "If we cannot buy out all of the stockholders of Obear Nester would it be practical to buy a part of them"?

A. Yes.

Q. Prior to that had you been considering trying to buy out the entire company Obear Nester or the entire stockholdings?

A. Yes, we had.

Q. And for some time prior to that?

A. There had been various negotiations with Obear Nes-

[fol. 3936] ter right along.

Q. And you reached a point where it appeared unlikely that you would be able to buy all of it?

A. That is right.

Q. Then you were speculating as to the possibility of buying one or more stockholdings?

A. Yes.

Q. Now, in that connection Mr. Wyss came into this picture. You approached Mr. Levis rather than his approaching you with respect to the possibility of buying Mr. Wyss or some other one, did you not?

A. I understood Mr. Levis knew Mr. Wyss and I asked him to introduce me to him.

Q. Then the contact with respect to Mr. Wyss possibly selling was made by you with Mr. Levis?

A. That is correct.

Q. Instead of Mr. Levis coming to you about it, that is what I wanted to know?

A. That is correct.

Q. When you say in that same letter, Exhibit 812, in the last paragraph, "The reason I mention this point is because Bill Levis has told me that Mr. Wyss, one of the large stockholders, is anxious to sell",—when you made that statement you were stating what Mr. Levis had told you after you had approached him on the subject?

A. That is correct.

Q. Now, did Mr. Levis at that time express any desire or [fol. 3937] intention of buying this stock himself?

A. No.

Q. Or did he express any desire or intention of negotiating for it on behalf of Owens-Illinois Glass Company?

A. No.

Q. Or the Illinois Glass Company with which he was connected?

A. Not to my knowledge.

Q. I pass to Exhibit 813, which is another of your letters dated November 26th, in which you appear to make further reference to your contact with Mr. Levis in that regard, and you start by saying, "I talked with Bill Levis this morning and he said he could meet me in St. Louis this morning, and said he could arrange for a meeting with F. H. Wyss". Do you recall that?

A. I can recall I believe.

Q. Did you request Mr. Levis to make this arrangement with Wyss for you?

A. As I have stated before, in any of these letters I have consulted with Mr. Levis as a friend of mine and knew I could get good advice from him in matters of this kind, and I had asked his advice in this matter and his assistance.

Q. When you said you talked to Bill Levis this morning, I am just wondering whether you called him and opened the conversation regarding this, or whether he took the initiative and called you about it?

A. I started by asking for his assistance in the matter.

Q. I pass then to Exhibit 814, which is a letter dated [fol. 3938] December, 1932, in which you further discussed over three pages the possibility of buying Mr. Wyss' in-

terest and possibly some others in which Mr. Levis is mentioned, and may we assume your answers with respect to Mr. Levis' connection there would be the same as those given?

A. They were the same.

Q. At that time Mr. Levis did not show any desire to purchase that stock for himself or anyone associated with him?

A. He did not.

Q. I came to Exhibit 798, which is a letter dated December 12, 1932, written to you by Holland & Armstrong, attorneys, New York City. It is entitled, "Feeder Litigation", and I would like for you just to look at paragraph 3, Mr. Rieman, to refresh your recollection about that statement.

A. I recognize that was a misstatement.

Mr. Middleton: The statement, Your Honor, referred to is in a very short paragraph in this exhibit reading, "I am not sure just what the connection is with the Lamb Glass Company, but it is my recollection that they were bought out by Owens some time ago. If so, it would be natural that Owens, being a large Hartford-Empire stockholder, would also bring any acquisition they might add into the Hartford fold". I believe you said you were mistaken about it?

A. I did not say I knew it. I was mistaken about it.

Q. You did not understand that Owens ever bought Lamb Glass Company?

A. I did not.

[fol. 3939] Q. As a matter of fact they never did?

A. That is right.

Q. So far as you know they never tried to buy it?

A. That is right.

Q. You had no information or no facts to base that statement on that Owens was a large Hartford-Empire stockholder excepting perhaps just a rumor?

A. That is right. No more than a rumor and the announcement which you read a little while ago.

Q. Had some relations with Hartford?

A. Yes.

Q. You had never known that Owens was a Hartford stockholder?

A. I never knew the facts.

Q. If we told you they never were, would you consider that a fair statement of the fact?

A. Well, if you said so I would believe it.

Q. What I am getting at is you are not now offering that as a statement of fact?

A. Certainly not.

Q. Now I pass to Exhibit 815, which is Mr. Levis' letter to you dated July 27, 1934, over two years following the letters concerning Mr. Wyss, and in that exhibit and also Exhibit 816, which is Mr. Levis' letter to you dated August 2nd, there is a discussion of Mr. Joseph Nester and Mr. Richard Moss. Do you remember those letters?

A. Yes.

[fol. 3940] Q. And Mr. Levis' statement that Mr. Moss was to meet him at Charlevoix, Michigan?

A. Yes.

Q. Mr. Levis said in both those letters he had no interest in these matters other than to be helpful to you. Was that your understanding of his connection at that time?

A. It was.

Q. Did he ever express any intention at that time, or any interest in purchasing any Obear-Nester stock or property?

A. He never did to me.

Q. Or anyone on behalf of Owens-Illinois Glass Company, did they express any such desire to you, or interest?

A. No.

Mr. Middleton: I think that is all, Your Honor.

The Court: Anything further on behalf of the defense? Does the government have any questions?

Mr. Apsey: Just a few questions.

The Court: Proceed.

Re-direct examination by Mr. Apsey:

Q. You didn't ever know the details of this 1924 contract between Owens and Hartford, did you, Mr. Rieman?

A. I did not know the details.

Q. You were not acquainted with the nature of any payments that were being made between the parties under that agreement?

A. That is right. I did not know them.

Q. It was your understanding at the time I believe you [fol. 3941] testified that Owens had some interest in Hart-

ford, you thought they had a stock interest, is that right?

A. I thought it was a stock interest.

Q. You did not realize it was a matter of royalty payments that Hartford was making to Owens, did you?

A. I did not know what the interest was.

Q. You made some kind of a statement to Mr. Goodrich that you might want to qualify a little bit. I think you said everything you went after from Hartford you always got. Now there were a few things you never got from Hartford, isn't it right; you testified, I believe, on direct examination that you made a great effort to find out from Hartford whether Hazel-Atlas was getting a preferential treatment. You never got that information from Hartford, did you?

A. I did not. My reply to that other question was with reference to machinery and equipment and license.

Q. I see. You did not refer to your efforts to have your royalties reduced. You never got your royalties reduced from Hartford either, did you?

A. No.

Q. You never learned about the Hazel-Atlas participation until you heard it in connection with the TNEC hearings?

A. That is correct.

Q. Now, there was some reference made by Mr. Middleton about statements in Exhibit 812, where you said, "The reason I mention this point is because Bill Levis told me Mr. H. Wyss, one of the largest stockholders, is anxious [fol. 3942] to sell his stock, and there might be several others in the same position". I believe you testified you understood Mr. Levis knew Wyss. Isn't the reference in this exhibit the reason you mention this point is because Bill Levis told me Mr. Wyss, one of the largest stockholders, is anxious to sell his stock, was that the basis for your understanding that Mr. Levis knew Mr. Wyss; I mean was that how you found it out in that conference with Mr. Levis?

A. I can't recall that.

Q. You had not seen Mr. Wyss at the time you wrote this memorandum, had you?

A. I can't recall that either.

Q. You certainly had not approached him at that time, concerning the manner of the acquisition of the stock?

A. As I recall it, I had not met Mr. Wyss at that time.

Q. Referring now to Exhibit 811, this statement, "The main thing we would be buying would be quota"—this is

with respect to the Diamond Glass acquisition—the six major concerns control about 70 per cent of the industry, and since the quota system was in operation years before the NRA and since the past meeting all of the major firms were in favor of retaining it, it seems as if it will continue. That past meeting was one of the Glass Container Association meetings?

A. I can't recall whether it was or not.

Q. You did testify the previous meetings were meetings of the Glass Container Association?

[fol. 3943] A. There were meetings of the Glass Container Association.

Q. Were there any other meetings where those major concerns would discuss this quota except at a Glass Container Association meeting?

A. There may have been.

Mr. Apsey: No further questions.

Mr. Goodrich: May I ask four questions in the matter of Mr. Apsey's re-direct?

The Court: Yes.

Re-cross examination by Mr. Goodrich:

Q. The greater part of your product at Capstan was pressed ware, was it not?

A. Originally it was, and then it developed into largely press and blow ware.

Q. Did you ever make a great deal of pressed ware?

A. Yes.

Q. Do you remember that royalties with pressed ware were reduced three-fourths of what they were when your license was issued?

A. Now that you refresh my memory I recall they were.

Q. Did you have Hartford lehrs at Capstan?

A. No.

Q. Were you paying a lehr royalty?

A. No.

The Court: Anything further of this witness?

Mr. Goodrich: That is all.

The Court: I think the bailiff may recess court for fifteen minutes.

(Recess 15 minutes.)

[fol. 3944] WILLIAM E. LEVIS thereupon resumed the stand.

Further direct examination.

By Mr. Isseks:

Q. Mr. Levis, when you were here last I was asking about Government's Exhibit 787, which I hand you a copy of. In that connection I will ask you whether it wasn't a fact in 1932 that your company was one of the largest manufacturers of milk bottles in this country.

Mr. Middleton: May I inquire the date of that exhibit?

Mr. Isseks: 787, the last one we talked to the witness about, December 10, 1932.

A. Yes, sir; we manufactured about 27%.

Q. Of the milk bottles?

A. Yes, sir.

Q. And Thatcher Manufacturing Company was a little larger, was it not, in quantity production of milk bottles?

A. I would say under the NRA code they were some place around 40.

Q. 40%. And I think you testified the other day that you approved of the license to Universal under restricted conditions?

A. Yes, sir.

Q. And Mr. Mandeville, of Thatcher, gave similar approval?

A. I didn't have anything to do with that, sir. You will have to ask Mr. Mandeville what he did.

Q. Did you talk to Mr. Mandeville about it?

A. I don't recall talking to him about it.

[fol. 3945] Q. Mr. Smith says in the second paragraph of the letter,

"I, of course, had in mind to call you up and give you the information, but Levis said he wanted to take the matter up with you anyways as you two might have a different picture. But now that you both approve it, it seems advisable to lose no time, and we hope to be able to report definite accomplishments to you by the end of next week or the first of the week following."

A. I don't recall the circumstance, sir, and I don't feel bound by what Mr. Smith tells Mr. Mandeville.

Q. You wouldn't dispute Mr. Smith said it?
A. I don't recall it.

Mr. Isseks: At this time I offer as the next Government's Exhibit, 817, this letter, dated September 15, 1932, written to Mr. McNash, signed "Bill", stipulated as genuine by Hazel-Atlas, page 6, apparently written by the witness. I offer it in evidence.

The Court: It may be admitted.

(Government's Exhibit 817 read by Mr. Lewis.)

Q. Mr. Levis, did you write that letter?
A. Yes, sir.
Q. At this time I show you Government's Exhibit 162, which is a letter dated January 10, 1933, written by Mr. F. Goodwin Smith, addressed to Mr. Amory Houghton, and I direct your attention to the second page. I think perhaps you better read the first page, too, because the reference [fol. 3946] to you in the second page relates to the same subject-matter and is apparently covered by reference. I call your attention to the fact the first page refers to the fact that Hartford, under its agreement with Hazel, has to bring suit by June 1, 1934, in a district other than the Third Circuit. You knew about that subject-matter, didn't you, at the time?
A. I probably knew generally about it; I didn't know specifically.
Q. What is your present recollection of what you knew at the time? I don't mean in detail.
A. Before I read the letter?
Q. I think you might read it. It will help you a whole lot.
A. (After witness reads letter.) I was generally familiar with the subject, but I didn't understand it specifically.
Q. Well, what was your general understanding, sir?
A. Well, I understood that there was some question that unless Hartford sued someone else than one, that Hazel got out of something, or it might have been the reverse of that; and there was the question of whether or not these reciprocating or non-reciprocating plug feeders—I wouldn't know one from the other, because we didn't operate hardly any——
Q. See if I can refresh your recollection.
A. —whether or not they were to pay royalties. I felt that Hazel ought to pay royalties on everything that it

made, and I would have done everything I could to try to get it to do it.

[fol. 3947] Q. That was one of the subjects of controversy, about whether or not Hazel would pay royalties on a plug feeder; you knew about that, you said the other day?

A. Yes.

Q. The other one was, as far as you knew, Hartford had to get a decision in other than the Third Circuit on one of its patents, otherwise by June 30, 1934, or July 1, 1934, Hazel might get out of its obligation to pay royalties?

A. I knew generally about it but it was something that was between Hazel and Hartford. As he said in this letter, I believed that the commercial situation would control it: if it would be a good enough feeder they could go out and do something about it, or use this feeder.

Q. That is what I am getting at. Mr. Smith, on the second page says:

"I also explained the situation to Levis. He does not see as much danger to this situation as we do as he thinks commercial situations will control, but he has agreed to assist us in an attempt to have this clause removed or greatly modified."

Q. Did Mr. Goodwin Smith set forth in substance what you told him?

A. Well, I don't know as I told it to him, but that was my opinion.

Q. At that time?

[fol. 3948] A. Yes.

Q. Now, I show you Government's Exhibit 206, which purports to be a letter addressed to Mr. McNash, dated July 21, 1933, by F. Goodwin Smith, with regard to possible application for a limited license by Kerr for domestic household fruit jars, and in the second paragraph Mr. F. Goodwin Smith says,

"Mr. Levis approves of this step on the part of Ball Brothers. I am writing you to obtain your views before we actually proceed to grant such a license."

A. I was in favor of the licensing of everybody. It would increase our royalty income, and we got a third of it.

Q. I understand that, but my question is whether Mr. F. Goodwin Smith set forth in this letter, Government's Exhibit 206, your views at that time?

A. My view was to license everybody, including Obear Nester and Reed.

Q. I am sorry, I have to repeat my question.

A. I will answer so far as Goodwin Smith's letter to Mr. McNash is concerned, I don't feel obligated to it, but it does express the views I had on that subject.

Q. Thank you, that is what I was trying to find out. I show you Government's Exhibit 163, Mr. Levis, which purports to be, which, rather, is, a letter dated March 7, 1933, addressed to Mr. McNash, signed by Mr. F. Goodwin Smith, in regard to the right of Hazel-Atlas to manufacture milk [fol. 3949] bottles in connection with their west coast plant, and the notation, in Mr. McNash's handwriting, "Subject to consultation with the Owens-Illinois", and I ask you whether you were consulted by Mr. McNash in connection with the issuance of that license?

A. No, I don't think I was.

Q. Would you say flatly that you were not?

A. Yes, because I was very much surprised when I learned of it.

Q. And Mr. McNash, when he put that down, was not referring to Owens-Illinois? He says here, "Subject to consultation with Owens-Illinois."

Mr. Middleton: I object to the question.

The Court: It is Mr. Smith who speaks?

Mr. Isseks: No, it is in the handwriting of Mr. McNash, according to the testimony. Isn't that so, Mr. Wall?

Mr. Wall: I think so, at the end of the letter.

Mr. Isseks: I think so, the original showed it. Mr. Goodwin Smith testified it was Mr. McNash's handwriting.

A. I presume it would be. We had the only milk bottle license on the coast, and I guess he would want to talk with us about it. I remember the circumstances. I certainly wasn't consulted about it, and I was very much surprised when I learned about it.

Q. You say you were not consulted about it?

[fol. 3950] A. That is what I answered first, I think.

Q. That Mr. McNash didn't talk to you about it?

A. Not that I recall.

Q. And Mr. F. Goodwin Smith didn't talk to you about it?

A. Not that I recall.

Q. I show you Government's Exhibit 164, which is a letter addressed to you by Mr. F. Goodwin Smith, with regard to participation in the settlement of various claims against people who became licensees after July 1, 1932, and I will ask you to read it first, please.

A. (After witness refers to letter.) I recall the letter.

Q. You remember receiving it?

A. Yes.

Q. First of all, Mr. Smith says to you

On April 7, 1933: "As you know, McNash agreed to waive any participation in the Ball settlement."

Do you remember that, sir?

A. No, I don't remember that specifically but I remember the contract was Hartford were going to pay all the legal expenses from 1932, inasmuch as we had been paying part of the legal expenses in the back period, and that if there was any money collected as the result of that expense, we were entitled to it, and naturally so.

Q. Will you please answer the question?

A. I answered it by saying I didn't recall that part of it, and elaborated further by the comment.

Q. The letter states: "as you know, McNash agreed to [fol. 3951] waive any participation in the Ball settlement". My recollection is the contract does not specify anything about that, and I am trying to find out any recollection of any oral arrangement. Did you have an oral arrangement with Mr. F. Goodwin Smith and Mr. McNash?

A. I wouldn't know whether oral or written, but I know I had the general understanding we were going to get any part of the back damages as the result of which we had contributed to the legal expense.

Q. You weren't going to get half?

A. Yes, I thought I was entitled to half.

Q. That is what you agreed to?

A. I don't know whether we agreed to it or not, but this is the way I feel about it.

Q. Did you get half?

A. I think we did.

Q. The letter states:

"It is not clear to me, upon further consideration, as to whether we ought not to let McNash participate in our settlement of Diamond and Standard."

A. I wouldn't know that, but our records would show.

Q. Do you have any recollection?

A. No.

Q. You say your records would show?

A. Yes, all the damages received we treated as damages received, and who paid them.

Q. "I am under the impression that our verbal agreement with McNash was to the effect that he would not claim [fol. 3952] participation in damages received from such concerns as Reed, Peerless, Ball, Ran, Obear Nester and the Pacific Coast people, but he would feel that he was entitled to a participation in damages received from people whom we had not notified of infringement and people who would take a license from us after the first year or so." Does Mr. F. Goodwin Smith set forth in what he says here, a verbal agreement between the three parties?

A. I don't recall there was a verbal agreement on that. We were to get half of any part of the damages where any part of the legal expense we contributed to resulted in getting damages. Beyond that I didn't think we were entitled to anything.

Q. Did Mr. McNash participate in any of the so-called damages paid?

A. I don't know, but the Hartford records ought to show.

Q. You don't know anything about the verbal agreement?

A. No, sir. I want to correct that. There is no verbal agreement. I know what I thought the understanding was at that time. It must have been a verbal agreement. I don't recall it, if it were a verbal agreement.

Q. What is your present understanding of that verbal agreement?

A. I will restate it. We were to get half of the damages that resulted from any collection to which we had contributed part of the legal expense from which the collection resulted.

Q. In the last paragraph of Government's Exhibit 164, [fol. 3953] Mr. F. Goodwin Smith says—this is April 7, 1933—

"I think it would be good business to list the concerns not yet in the field and sit down with McNash and settle definitely just what concerns he feels there should be a one-third division and just what concerns he feels there should

be a one-half division, otherwise we are not going to know just how to set our contracts up on our books."

Do you remember that part of the letter?

A. I remember reading it in the letter.

Q. Did you have such a conference where you sat down and listed all the companies?

A. Not that I know of.

Q. Would you deny you had such a conference?

A. No, sir.

Q. Thank you, sir.

Mr. Isseks: At this time I offer as Government's Exhibit 818, letter dated May 24, 1933, addressed to the witness, signed by Mr. F. Goodwin Smith, copies to R. D. Brown and W. J. Belknap, not stipulated, but furnished to the government pursuant to request about two weeks ago during the progress of this trial. I offer it in evidence, Your Honor.

The Court: It may be admitted.

(Government's Exhibit 818 read by Mr. Kramer.)

Q. Did you receive that letter, sir?

A. Yes, sir.

[fol. 3954] Q. I direct your attention to the second page, second full paragraph. Have you any present recollection of any conversations with Mr. F. Goodwin Smith *to* regard to the desirability of not having the arrangement between Hartford and Hazel-Atlas become public?

A. No, sir.

Q. Never talked about that at all?

A. I may have talked about it but I don't have any recollections of it.

Q. And the statement to you in this letter about the chance of the matter becoming more and more public doesn't in any way refresh your recollection that it was a desire on your part and the part of Hazel and the part of Hartford the matter not become public?

A. I read this letter carefully two or three times after having been presented to us, and I do not have any recollection of it. I don't deny I got it, but I have no recollection of this specific letter, or the inferences included in it.

Q. You said you remembered receiving the letter?

A. I remember receiving the letter. I didn't dictate the letter. I didn't dictate the allegations in it. I have read it two or three times. I have no specific recollection, sir.

Q. You made some statement about your having received the papers. Do you mean the government has furnished your counsel the copies of the papers?

A. I looked over the copies of the papers my counsel has.

* * * * * * *

[fol. 3955] Q. Have you, sir?

A. Those that were my own letters I had copies of.

Q. Did you have a chance to read them?

A. I have read all of my own letters.

Q. That is all I am trying to find out. Now, I show you Government's Exhibit 720, which is dated May 27, 1933, which is in reply to the letter which was just marked in evidence, Government's Exhibit 818. I direct your attention to the second full paragraph, where you state—written by [fol. 3956] the witness, Your Honor—to Mr. F. Goodwin Smith:

"I have talked with C. B."——

that is Mr. Belknap, is it not, sir?

A. Yes, sir.

Q. ——"about the matter, and we both believe that your idea is a good one and that the matter should be handled in accordance with the suggestions covered by your May 24th letter, but we further believe that it would be a better idea if I were personally to contact Harrison alone, talk with him very seriously about this situation, let him understand that what he is doing is contrary to the way I think the matter should be handled, and then, if I do not have any success in getting him to make payment for ware made on the so-called non-infringing feeders, you proceed as suggested in your May 24th letter."

You wrote that, did you not, sir?

A. Yes, sir.

Q. Did you talk to Mr. McNash?

A. I may have, yes, sir.

Q. Do you have any recollection of having talked to him?

A. No, sir.

Q. Don't you remember? Isn't it a fact you did talk to him and told him it was very important this matter be settled, otherwise there was a strong likelihood of the Hazel-Atlas-Hartford contract becoming public?

[fol. 3957] A. No, sir.

Q. You did not, sir?

A. I don't recall doing it. I don't say I didn't.

Q. You don't deny it?

A. No.

Q. It would be a normal thing for you to say that?

A. It would not be very normal for me to be concerned about the secrecy of the Hazel contract, but it would be very normal for me to want him to pay royalty on everything he purchased, and there was an arbitration provision, as I understood, in the thing. I never understood why they didn't just go ahead and arbitrate.

Q. Don't you remember that Hartford and Owens were fearful that an arbitration proceeding would not be secret, necessarily, and might throw the thing wide open to the public?

A. No, sir. If you refresh my recollection on that phase of it enough——

Q. Don't you remember Hartford were worried for fear arbitration proceedings might necessarily be public and therefore everybody would find out about this agreement?

A. My answer is the same as before, sir.

Q. I now show you Government's Exhibit 721, in reply to your letter, or rather, shortly thereafter, dated June 13, 1933, addressed to you, by Mr. F. Goodwin Smith, in which it is stated:

"Enclosed please find a copy of a report made by W. J. Belknap and Brown, relative to what takes place under the [fol. 3958] rules of the American Arbitration Association if the present dispute between Hazel and Hartford goes to arbitration. I think one side of the question depends upon how secret these arbitration proceedings can be kept; and the second question is whether Hazel would not naturally call in Tygart Valley and others to assist them in destroying the Peiler plug feeder patent."

Does that refresh your recollection?

A. It might have been Goodwin Smith's opinion, if he wrote it to me and I received the letter.

Q. Did you disagree with him, sir?

A. It was never my opinion, I never was particularly concerned about the secrecy of it. I thought it ought to be a confidential matter, inasmuch as we were not the sole party to the contract, but I think I was the one who suggested the arbitration and sent him a copy of the American

Arbitration Association rules. I was busy with our bottle business and this was the thing I didn't want to have to worry about.

[fol. 3959] Q. Do you distinguish between secret and confidential?

A. Definitely.

Q. I will take it. What is it?

A. Has anybody a dictionary?

Q. Oh, no, I want your understanding, please.

A. That is a hard one.

Q. Thank you very much.

A. Do you mind if I give it to you at some later time when I have had some chance to think it out?

Q. No, I want it now. You said you presently distinguish between secret and confidential.

A. It is not hard to distinguish between black and white; but I cannot tell you what that difference is.

Mr. Isseks: Your Honor, at this time I offer as the next government's exhibit a letter dated July 1, 1933, written by the witness to R. H. Levis; stipulated as genuine by the witness' counsel.

The Court: It may be admitted.

The Clerk: Government's Exhibit 819.

Thereupon, Government's Exhibit No. 819 was read to the Court by Mr. Kramer, of counsel for the government.

Q. Did you write that letter, sir?

A. Yes, sir.

Q. Going back to this question about secrecy or publicity in connection with any proposed arbitration proceedings with regard to the so-called plug feeder controversy, I show you Governments' Exhibit No. 707, which is a memorandum written by Mr. A. D. Falck, to Mr. F. Goodwin Smith, June [fol. 3960] 20, 1933. I direct your attention to the fifth full paragraph, beginning right here, in which Mr. Falck states:

"Referring to point 1. It seems to me almost a certainty that arbitration will result in some publicity, that is, sufficient publicity to get to the interested branch of the glass industry. Even though there should be no general publicity, witnesses will talk. The fact then that Hazel is contesting this point would be detrimental to us, to Owens and I think equally to Hazel in the long run. It will encourage outsiders to use and to try to develop this type of feeder."

Was your feeling the same as Mr. Falck's, chairman of the Board of Directors of Corning?

A. No, sir.

Q. You did not agree with that?

A. No, sir.

Mr. Isseks: Your Honor, at this time I offer as the next government's exhibit, No. 820, a letter dated July 6, 1933, written by the witness to Mr. R. H. Levis; stipulated to be genuine by the witness' counsel.

The Court: It may be admitted.

Thereupon, Government's Exhibit 820 was read to the Court by Mr. Lewis, of counsel for the government.

Q. Mr. Levis, did you write that letter, sir?

A. Yes, sir.

[fol. 3961] Q. I now show you Government's Exhibit No. 165, which purports to be a letter dated June 30, 1933, addressed to Mr. Falck, written by Mr. F. Goodwin Smith. I am going to hand it to you and ask you a few questions. You will note in the first sentence that Mr. F. Goodwin Smith says,

"I spent four hours with Levis and McNash yesterday. I did not mince matters with McNash, neither did I get anywhere, so to speak, but I did clearly state to McNash with some force back of it the following:"

Do you remember a conversation on or about the date of that letter, June, 1933?

A. Yes, sir.

Q. You do?

A. Yes, sir.

Q. Rather vividly, do you not?

A. No, sir.

Q. But you remember it?

A. Yes, sir.

Q. Tell us your recollection about it without reading the letter, or would you rather read the letter?

A. I read it a week or so ago when you put it into the record.

Q. Read them as we go along?

A. Yes, sir.

Q. What is your present recollection?

A. The letter or the paragraph?

[fol. 3962] Q. Do you remember the letter?

A. I remember reading it the other day.

Q. Do you remember the conference to which it refers at great length?

A. No. I remember the conference.

Q. You do?

A. Yes, sir.

Q. Tell us what happened at the conference, either by reference to the letter or independently, either way, sir.

A. We had a talk about the whole Hazel situation. I did not subscribe to what Goodwin interpreted as what I said about the Hazel situation, because I never did feel that way about it, and I do not today. I did not go on the Board and do those things to influence them.

Q. Is there anything else you want to say?

A. I have no comments to make on it. It is a letter between Mr. F. Goodwin Smith and Mr. Falck about a conference he says I had with him. I recall the conference and recall having a general discussion with him. I do not share the views he expresses as to what I told him.

Q. He wrote the letter at the time?

A. I don't know.

Q. He testified he wrote it the day after the conference. That is his testimony. He said he spent four hours with you and McNash. He said, the fourth paragraph, the first page, that he told Mr. McNash in your presence there, [fol. 3963] "That it was difficult for us to believe Hazel wishes to pursue a destructive course". Do you remember him saying that to Mr. McNash?

A. No, sir.

Q. The next item, Item 5:

"That if Hazel believed in a stabilized situation in the glass industry, then they, as a partner of Hartford, should do their full share."

Did Mr. F. Goodwin Smith say that?

A. No, sir.

Q. He did not say it?

A. He did not say it to me.

Q. Did he say it to Mr. McNash in your presence?

A. I would not deny he said it. We talked about everything. But I do not recall that he said it. This is a memorandum from Mr. F. Goodwin Smith to Mr. Falck, in which he quotes something I say. I admit I was at a conference

with Mr. Smith at about this time, but I do not recall all that occurred at the conference.

Q. Do you remember Mr. F. Goodwin Smith saying,—reading paragraph 8,

"That the July 1, 1934, clause in our contract forces Hartford to try the Peiler patent in the Buffalo district—that this position was unwise from the Hartford, Hazel and Owens' standpoint."

A. That was their controversy. They talked about it all [fol. 3964] the time to themselves and everybody else. I was in the conference. If there was any secrecy about it, why it did not leak out, I don't know.

Q. Who was present at the conference besides you, Mr. McNash, and Mr. F. Goodwin Smith?

A. I don't know.

Q. Were you present at any other conference when Mr. F. Goodwin Smith made the same statements you said he said to others?

A. I was present lots of times when they kept talking about this Peiler plug situation. Those were the things they talked about. I was not particularly interested in it. I wrote letters back and forth to Mr. McNash telling him what my thinking was, but I never understood it particularly.

Q. Who else did he say it to besides you and Mr. McNash?

A. I will not answer that because I do not know.

Q. You testified a minute ago that it was stated at various conferences. Was there anybody else present besides you and Mr. McNash?

A. To straighten it out, I should like to have two questions read.

(Questions and answers read.)

Q. My question is, who is everybody else?

A. I said I did not know.

Q. Except Mr. McNash, you do not know of anybody?

A. Oh, it was discussed at numerous conferences. For [fol. 3965] Owens Mr. Belknap was there; Mr. Carter; probably Mr. Williams; Colonel Brown; W. J. Belknap; at many conferences the subject was talked about.

Q. Nobody but a Hartford representative, an Owens representative, or a Hazel-Atlas representative?

A. I would not say that.

Q. In this same paragraph, Paragraph 8, Mr. F. Goodwin Smith says that he said to Mr. McNash in your presence:

"The suit, if successful would not benefit Hazel, and if unsuccessful it might destroy the very situation Hazel desired. Further, that if the stabilization of the industry is advisable, then cooperation is necessary, and that the Hazel contract should be changed so as not to force Hartford to make an unwise move."

Did Mr. F. Goodwin Smith say that to Mr. McNash in your presence?

A. I don't recall it.

Q. You would not deny it?

A. No, sir.

Q. Then in Paragraph 9, Mr. F. Goodwin Smith recites what he said to Mr. McNash in your presence:

"Hazel cannot expect Hartford to make sacrifices to stabilize the industry and at the same time continue to receive their share and yet not do their part, that fair play and fair dealing just demanded 100% cooperation."

[fol. 3966] Q. Did Mr. F. Goodwin Smith say that to Mr. McNash in your presence?

A. I think he did. I remember the gist of that kind of comment.

Q. Going to the bottom of page 2—no, I will defer that, if you do not mind, until some other time. I will ask you about that when we come to the whole Lynch and Ed. Miller matters.

Mr. Isseks: Your Honor does not mind?

The Court: All right.

Q. I will go to the bottom of Page 3, after the break:

"Levis advised me confidentially that he proposed to have the Illinois Company purchase 40,000 shares of Hazel's stock. This will represent 1/10th of the common stock, and with this holding he proposed to demand a directorship."

Did you say that?

A. No; I never intended to buy that much Hazel stock, and I did not buy it.

Q. Did you say to Mr. F. Goodwin Smith that you proposed to demand a directorship at some time in Hazel-Atlas?

A. No; I never intended to demand it.

Q. Did you tell him in words or substance that you expected to get a directorship in Hazel-Atlas?

A. No. I might have said that Mr. McNash asked me, if we secured these shares, would I be willing to serve on [fol. 3967] his Board.

Q. What would you say you said to him?

A. I will say that is what I said, and my uncle said to him.

Q. What did you say to Mr. F. Goodwin Smith, if anything, which resulted in his making a statement the next day to Mr. Alexander D. Falck?

A. I will say what I stated was what I said to him.

Q. At page 4, Mr. F. Goodwin Smith states:

"Levis suggested in rather a joking way, but with some seriousness back of it, that he would like to purchase some Hartford stock and sit on the Board."

Did you tell that to Mr. F. Goodwin Smith at or about that time?

A. Yes. I wrote to my uncle and to the Board of Directors of the Illinois Glass Company, and they told me I could not do it; and we did not do it.

(Evening adjournment.)

[fol. 3968] (Thereupon, at 10 o'clock a. m., Friday, April 18, 1941, the trial was resumed.)

Mr. Goodrich: May I interpose one minute to give a citation? If Your Honor please, when Mr. Geer was on the stand we referred to decisions in the suit of Hartford-Empire vs. Swindell Brothers, and so forth, and omitted the citation of the trial court decision, which is 18 Federal Supplement 191. I just wanted that in the record.

The Court: Very well. You may proceed.

Mr. Isseks: At this time I offer in evidence as Government's Exhibit 821, a letter dated July 6, 1933, sent to the witness, signed "Harrison", written by Mr. McNash, and stipulated as genuine by the Owens-Illinois at page 23 of the stipulation.

The Court: It may be admitted.

(Government's Exhibit 821 read by Mr. Shields.)

Mr. Isseks: At this time, Your Honor, I would like to offer as Government's Exhibit 822, the reply, dated July 10, 1933, addressed to Mr. McNash, signed by the witness, stipulated as genuine by Owens-Illinois at page 23 of the stipulation.

The Court: It may be admitted.

(Government's Exhibit 822 read by Mr. Lewis.)

Q. Did you write that, sir?

A. Yes, sir.

Q. I now show you Government's Exhibit 166, which is a letter dated July 11, 1933, addressed to Mr. C. B. Belknap [fol. 3969] by R. D. Brown, and which has attached to it a memorandum submitted to F. Goodwin Smith, dated July 11, 1933, signed by R. D. Brown. The letter recites:

"I enclose a memorandum of a talk which W. J. and I had with Philbin last week about the Hazel contract. Goodwin has just told Mr. Levis about this. Mr. Levis will, no doubt, be interested in learning your views."

I direct your attention to the handwriting on the top, "W. E. L. I think this is O. K." Whose handwriting is that?

A. It looks like Mr. Belknap's.

Q. And to the handwriting just underneath, "So do I. W. E. L."

A. Yes, sir.

Q. Is that your handwriting?

A. Yes, sir. You understand I have never read that, I am just testifying to the handwriting.

Q. You must have read it at the time, otherwise you wouldn't have put that on the letter?

A. I put it on the letter. I haven't refreshed my recollection.

Q. You wouldn't put it down, "So do I. W. E. L.", unless you read it at the time?

A. No, sir.

Q. That is what I am trying to find out. I show you Government's Exhibit 722, which is a memorandum dated July 21, 1933, addressed to you, signed by Mr. Belknap.

A. Yes, sir.

Q. Do you remember having received that memorandum [fol. 3970] in the regular course of business?

A. Yes, sir.

Q. I now show you Government's Exhibit 167, which is a letter dated August 2, 1933, addressed to Mr. Amory Houghton, signed F. Goodwin Smith, and it states in the last paragraph,—this is about the question of when Hartford has to sue in another circuit,—he says in the second paragraph,—this is Mr. F. Goodwin Smith,—

"I expect to hear early next week from Levis as to what McNash's final attitude is on the question of the 1934 date, Section 3 of the Hartford-Hazel-Atlas agreement. When we get this reply we will know what our procedure should be in regard to Reed."

Were you supposed to be in touch with Mr. McNash in trying to get an extension of time for that date in 1934?

A. Very hazy in my mind, but I know I testified about both that and the reciprocating plug, but I wasn't an expert on either of them.

Q. Did you talk to Mr. McNash about it?

A. Yes, sir.

Q. What is the reference, "When we get this reply we will know what our procedure should be in regard to Reed"?

A. I don't know.

Q. Weren't you trying to work out a settlement with Reed to have him come into the "fold", to use an expression used by various people in various documents?

A. It may have been, if he was writing to Mr. Houghton, [fol. 3971] but I don't understand the reference to me at all, except I was to see Mr. McNash and after I had seen him something might happen.

Q. Did you see Mr. McNash?

A. I probably did. I saw him at least once a month.

Q. On that subject-matter?

A. No, sir; on a number of subject-matters.

Q. I mean do you recall seeing him in connection with an effort to find out McNash's final attitude on the question of the 1934 date, as stated in here?

A. I don't recall it specifically, but I don't deny it.

Q. I show you Government's Exhibit 168, which is a letter dated August 10, 1933, written by Mr. Smith to Mr. Houghton, in which there is the following statement in the first two paragraphs:

"You will remember when we were last in New York Levis dictated a letter to McNash and accompanied this letter with a copy of a proposed change in Section 3 of the Hartford-Hazel agreement, which change was prepared by Brown and Belknap."

That is the first paragraph. Do you remember having a conference in New York with Mr. Houghton, Mr. Goodwin Smith, Mr. R. D. Brown, Mr. Belknap and yourself, in regard to that subject-matter?

A. I don't remember the particular conference. The letter don't indicate Mr. McNash was there. I was writing him a letter.

Q. Do you remember the conference with the other gentle- [fol. 3972] men in which you dictated a letter to Mr. McNash?

A. I don't remember specifically but I don't deny I did it.

Q. It says, in the second paragraph:

"McNash sent this proposed change on to Philbin and enclosed herewith is a copy of Philbin's reply, which I have told Bill Levis we would keep confidential."

Do you remember receiving that particular opinion?

A. No, sir. I remember the general discussion but I don't remember it specifically, sir. I won't deny I received it.

Q. What is your present recollection of the general discussion?

A. My present recollection of the general discussion is a very hazy one, sir.

Q. I now show you Government's Exhibit 169, which is a letter dated August 24, 1933, addressed to Mr. Amory Houghton, written by Mr. F. Goodwin Smith. Now in here there is a reference in the first part of the letter to a subject-matter I am going to ask you about later on, namely, the closing of the Lynch deal. I will talk to you later in the day about that, I hope, or on Monday, but he says, in the fourth full paragraph:

"The next time you and I meet I want to unfold to you his latest plans and ideas for having a finger in every pie."

Do you remember what that has reference to?

A. No, sir, I don't.

Q. You would not deny you made the statement to him which resulted in his coming to that—if I may call it—conclusion?

A. Yes, I would deny that, because I don't think I ever [fol. 3973] intended to have my finger in every pie.

Q. You say you specifically deny you made statements to F. Goodwin Smith which resulted in his making that statement, sir?

A. Yes, sir.

Q. Now, on the next page, the third full paragraph:

"Confidentially, plans have all been agreed upon whereby Levis will be elected a director of Hazel-Atlas around October 1st."

Did you state to Mr. Goodwin Smith, words which resulted in his making that comment to Mr. Amory Houghton?

A. Mr. Goodwin Smith might have interpreted it that way, but the way I testified to it yesterday, sir, is the way it happened.

Q. In the next paragraph Mr. F. Goodwin Smith says:

"He"—referring to you—"has made a number of other moves which, as far as I can see, about prevents McNash from opposing a number of his plans."—referring to your plans—"This is another phase of the general situation which sometime I would like to talk over with you."

Do you remember that, sir?

A. No, sir.

Q. Would you say that you did not make statements to Mr. F. Goodwin Smith which resulted in his making these statements to Amory Houghton?

Mr. Middleton: I object to that question.

The Court: Overruled.

[fol. 3974] Mr. Middleton: May I state the reason? It is a statement of a conclusion. It is not a question.

The Court: The witness may answer, if he knows.

A. I deny that I made any statement that would justify that conclusion.

Q. I thank you very much.

Mr. Isseks: I now offer as the next Government's Exhibit, a letter dated October 16, 1933, addressed to R. J.

Miedel, Hazel-Atlas Glass Company California, signed by J. H. McNash, president, stipulated as to genuineness by Hazel-Atlas at page 8 of the stipulation. I offer it in evidence. (Government's Exhibit 823.)

The Court: It may be admitted.

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[fol. 3975] Q. Now, Mr. Levis, I direct your attention to the third full paragraph of that letter and ask you whether you had the conversation with Mr. McNash, in substance, as set forth by him in his letter to his associate, Mr. Miedel?

A. I don't recall the specific conversation, but I probably did, and I don't deny I had it.

Mr. Isseks: At this time I offer as Government's Exhibit 824, a letter dated August 2, 1934, addressed to Mr. R. H. Levis, signed by the witness, stipulated as genuine by counsel for the witness.

The Court: It may be admitted.

(Government's Exhibit 824 read by Mr. Shields.)

Q. Did you write that letter, sir?

A. Yes.

Mr. Isseks: At this time I offer as Government's Exhibit 825, letter dated August 29, 1934, to Mr. R. H. Levis by the witness, stipulated as genuine by his counsel.

The Court: It may be admitted.

(Government's Exhibit 825 read by Mr. Shields.)

Q. Did you receive that letter, sir?

A. Yes, sir.

Mr. Isseks: At this time I offer as Government's Exhibit 826, a letter dated November 24, 1934, addressed to Mr. R. H. Levis, written by the witness, stipulated as [fol. 3976] genuine by his counsel.

The Court: It may be admitted.

(Government's Exhibit 826 read by Mr. Shields.)

Q. You wrote that letter, did you not?

A. Yes, sir. I would like to comment, though, that the quota situation was during the NRA, when all items were handled by quota of that type.

Q. And you, of course, learned, as an executive of the company, that a time came in May, 1935, when the Supreme Court of the United States held the NRA as unconstitutional?

A. I learned that, but as a citizen, that we had gone back to the "horse and buggy days".

Q. You also learned that as an executive of a large corporation engaged in a competitive enterprise?

A. Not officially as such executive.

Q. You didn't take official notice of it?

A. I learned it in my private capacity.

Q. You separate your official from other capacities?

A. I have to because these letters were written, some as president of an investing trust, and other things were done as president of an operating company, and still others as a director of various corporations.

Q. You were a director of Hazel-Atlas during the period we are talking about, in 1934; when did you become a director of Hazel-Atlas?

A. The answer shows that I became a director October 3, 1935.

Q. Of Hazel-Atlas——

A. 1933.

[fol. 3977] Q. Excuse me, I thought so. When did you resign?

A. And the answer shows I resigned October 25, 1935, but I never attended any meetings after July of 1935.

Q. Now, Hazel-Atlas was a competitor of yours, was it not, throughout the period you were a director of both companies?

A. Hazel-Atlas was a competitor of the Owens-Illinois Glass Company, not of mine.

Q. Well, you were president of the Owens-Illinois?

A. I was president of the Illinois Glass Company.

Q. Both companies?

A. Yes, sir.

Q. And you were getting paid by the Owens-Illinois Glass Company?

A. Yes, sir.

Q. Were you getting paid by the Illinois Glass Company?

A. Yes, sir.

Q. Were you paid by the Hazel-Atlas Company?

A. No, sir. I got a fee of $20, which didn't pay half my railroad fare.

Q. You voted, while you were a director of Hazel-Atlas, on matters brought before the Hazel-Atlas board?

A. Sure.

Q. And they were competing with the Owens-Illinois Glass Company in various lines?

A. Very few lines.

Q. Tell us what you were competing in.

A. Fruit jars, cosmetics.

Q. Also packers' ware?

[fol. 3978] A. A small amount of packers' ware Owens-Illinois made.

Q. Milk bottles?

A. On the west coast, they made a few there.

Q. And you made them on the west coast, too?

A. Yes, sir.

Q. Anything else?

A. Caps.

Q. Anything else, sir?

A. (No response.)

Q. Isn't it a fact that your company at that time,—and by "your company" I mean the Owens-Illinois Glass Company, the one that is the manufacturing company,—was the largest manufacturer of glass containers in the United States?

A. Yes, sir.

Q. And that Hazel-Atlas Corporation, of which you were a director during the period you mentioned, was the second-largest manufacturer of glass containers in the United States?

A. Yes, sir.

Q. And you were a director during this period, whatever the period is, of both companies?

A. Yes, sir.

Q. Sitting on the board of both companies?

A. Yes, sir.

Mr. Isseks: At this time I offer in evidence a letter dated April 1, 1935, written to Mr. R. H. Levis, signed by the witness, stipulated as genuine by his counsel, marked Government's Exhibit 827.

The Court: It may be admitted.

(Government's Exhibit 827 read by Mr. Lewis.)

[fol. 3979] Q. Did you write that letter, sir?

A. Yes, sir.

Q. First of all, you say here:

"Because of the recent publicity given Owens-Illinois and our investment in Hazel-Atlas in a letter read into the Congressional Record of March 8th by Mr. Borah,"——

were you present when that was read in?

A. No. I read it in the Congressional Record.

Q. Then you had a conversation at this directors' meeting with Mr. McNash as president, did you not, as set forth in the letter?

A. Certainly.

Q. You told Mr. McNash, "that it would probably be desirable for me to resign as a member of their Board at either their April meeting or their July meeting"?

A. That is right.

Q. —"and we discussed the advisability of having Mr. George Quay, Secretary of the Company, elected in my place, with the understanding that he would be representing us and that I would receive through him the same type of information I now receive as a Director." You said that to Mr. McNash and you both agreed to that, did you not?

A. No, we discussed it, is all I said.

Q. Did you resign?

A. Yes, sir.

Q. Was Mr. Quay elected?

[fol. 3980] A. Yes, sir.

Q. He was elected at the October meeting in your place?

A. I don't know what meeting; the record will show that.

Q. You resigned and he was elected?

A. Yes, sir.

Q. He still is a director?

A. So far as I know.

Q. Did you receive through him, after he became a director, the same type of information you had received as a director while you were a director?

A. No, sir.

Q. You did not receive anything?

A. I might have received something, but not the same type of information I received as a director.

Q. You say you did not?

A. It would be impossible. Mr. Quay could not give me the same type information from his attending them that I could get from attending them.

Q. Did he send you information after he became a director and you resigned?

A. I don't know whether he or Mr. McNash said it, but for some time I got their balance sheets, et cetera,—the same as I send to stockholders of our company.

Q. How long did you get that?

A. I don't know. The record will show.

Q. How long after you resigned October 1st, and Mr. Quay was elected; how long thereafter, to your best recollection? Was it six months?

[fol. 3981] A. It may have been longer than that. I got the same information they sent to all other shareholders. I would not differentiate between one and the other type of information.

Q. You wrote that letter to your Uncle Harry. I want to find out how long, to your best recollection, you received information from Hazel-Atlas or Mr. Quay? Was it up to the TNEC investigation in December, 1938?

A. I would not know.

Q. When is the last time you remember receiving it?

A. You will have to be specific, Mr. Isseks, as to what I received. If you say information,—I am still receiving information from Mr. Quay, who is still secretary of the company.

Q. What does he send you?

A. The same information that any other shareholder could get who asks for it. All I ever got was the same information that any other shareholder could get who asked for it. That is what I testified to the first day I was on the stand.

Q. You state here, "we discussed the advisability of having Mr. George Quay, secretary of the company, elected in my place, with the understanding that he would be representing us"—was that your understanding at the time he was elected?

A. Yes, sir.

Q. He is still representing you, is he not?

A. When we sent in our proxy for the Illinois Glass [fol. 3982] Company prior to its dissolution, we always made Mr. Quay the proxy.

Q. How many shares of stock did you have in the Illinois Glass Company?

A. 20,000.

Q. Was that sufficient to elect him?

A. No, sir.

Q. There was a big block there?

A. Not very big.

Q. A substantial block?

A. You read the percentage into the record. I do not try mentally to calculate it.

Q. Would you say it was a negligible block? You are a business man and we are trying to get a business man's understanding.

A. I would not have an opinion as to the size of the block, sir. It depends upon who is thinking about it. Mr. Underwood did not think that 47 per cent was control; and I think that 5 per cent is not control. Both of us are business men.

Q. That stock was voted up until the dissolution of the Illinois Glass Company in the fall, or August of 1938—I forget the date—you probably remember it was some time in 1938?

A. September 9.

Q. In 1938, after the TNEC investigators went to Alton and Owens-Illinois?

[fol. 3983] A. Sir?

Q. It was shortly after the TNEC investigation started?

A. Oh, no, it was as soon as the tax law passed which permitted us to have liquidation under the 15 per cent capital gain. It did not have anything to do with the TNEC.

Q. Chronologically, it was after the TNEC investigators came to Owens-Illinois and to Illinois Glass?

A. It might have been concurrent with it, but it had nothing to do with it.

Q. That is your statement. You say you voted your 20,000 shares—and I am now differentiating as you would like to have it differentiated in one of the preceding questions—you voted 20,000 shares for Mr. Quay year in and year out from 1935 to 1938?

A. I said when the proxy came in, Mr. Quay could vote it as he wished; if he desired to vote it for himself, it was his privilege; if he desired to vote it for Minnie Smith, it was his privilege.

Q. You said before the TNEC; page 481——

Mr. Middleton: I object to reading from the TNEC records. The Court has already ruled on it.

Mr. Isseks: It is directly contrary to what he said here. I am entitled to show exactly what he said there, at a time preceding the event, and before the lawsuit was instituted.

Mr. Middleton: I submit that the proper procedure has [fol. 3984] not been followed here for impeaching the witness.

The Court: You may show that to the witness.

Q. I show you the answer you gave before the TNEC, and ask you whether or not you made that statement at that time?

A. I have no objection to its going into the record. I think I can explain the difference.

Q. The witness said at that time, "I have always voted the Illinois interests for Mr. Quay".

A. That would not have been practical. It is a short-cut way of saying it. But the Illinois Company does not vote at a meeting for someone; it sends a proxy to someone who exercises that proxy to vote. I formerly had the proxy of Illinois when I was on the Hazel Board, and as proxy for it, voted for myself as a director. I could probably use the short-cut words of saying that the Illinois shares were voted for me.

Q. That is right.

A. But I do not see that there is a difference between what I said happened in our sending the proxy to Mr. Quay. He had a right to vote it as he saw fit. And my saying in the TNEC that the Illinois always voted for Mr. Quay—I think if you read further in the TNEC, you will see that I cleared that up.

Q. All I am interested in, sir, is that you were following out your "understanding that he (George Quay) would be representing us"?

A. I was writing a letter to Mr. R. H. Levis and the other [fol. 3985] directors of the Illinois Glass Company, who, with approval of counsel as to my being on both Boards, and the knowledge of all three directors as to my being on both Boards, had permitted the purchase of these shares. I was reporting to them what had transpired, and trying to sell them on the fact, whether I remained there or not, it

would probably continue to be a good investment. This is not a memorandum that I have written as to what actually transpired. It is a report to them of my having attended a meeting, and what I recollected had transpired after having attended the meeting, as their fiduciary representative of the shares of the corporation which they and myself and the directors held.

Q. Do you now deny what you said in the letter to Uncle Harry?

A. No, I do not deny what I said in the letter. I deny that it is an agreement of some kind. I state that it is a report of my recollection of the transaction after I returned from the meeting.

Q. You say here: "and we discussed the advisability of Mr. George Quay, secretary of the company, elected in my place, with the understanding that he would be representing us"—do you deny that, sir?

A. No, we did discuss it.

Q. He was elected and you gave him your proxy of the Illinois Glass Company?

A. No. I resigned from the Board of Directors, a va- [fol. 3986] cancy occurred, and the Board of Directors, of which I was not a member, elected Mr. Quay. At the next annual meeting we sent our proxy to Mr. Quay for him to vote as he saw fit.

Q. When you say "we" you mean the Illinois Glass Company?

A. The Illinois Glass Company.

Q. Up until September, 1938?

A. I would imagine those who have the shares in their name since the liquidation still continued to do that.

Q. I was coming to that. You anticipated me. You have some of those shares, do you not?

A. I got some in the liquidation, yes.

Q. About how many?

A. It is a matter of record in the TNEC. I cannot even guess.

Q. 5,000 shares.

A. No, sir.

Q. 2500 shares?

A. About 2,000 shares.

Q. You distributed those to 135 relatives and employes of yours?

A. In accordance with a schedule filed with representatives of the TNEC.

Q. You say it is your present recollection after the dissolution of the Illinois Glass Company most of these people —I think you volunteered the statement——

[fol. 3987] A. I said I assumed.

Q. What is your recollection?

A. I don't have any shares, sir.

Q. You had them for a while?

A. Yes, sir.

Q. What did you do with them when you had them?

A. Sent in the proxy to Mr. Quay.

Q. Do you know what your Uncle Harry did?

A. No, sir.

Q. You say you assume; what is the basis of your assumption? Generally assumptions are based on existing facts.

A. As I testified in the TNEC, my assumption is that because up at our annual meeting there would be a vast number of proxies running to me. We did not request any proxies. There are a number of people who are shareholders in the various companies of which I am on the Board, who have some respect for my integrity and my ability; and who consider that I represent them in connection with their investments in those companies. But I do not feel that I represented any one shareholder in any of those companies more than another; and I don't think Mr. Quay feels that way.

Q. You said you assumed after the dissolution of the Illinois Glass that the shareholders who received the distributed shares, and they were the 135 people that are alleged in the complaint to be the Levis associates, the Levis group—you say they are a group, a family of employees; you say you assume those people continued to vote for [fol. 3988] Mr. Quay?

A. I do.

Q. What is the basis of your assumption?

A. I intended to mean nothing in the world except I assumed they did.

Q. As long as you held your shares, you send your proxy to Mr. Quay?

A. I cannot say specifically; but had I taken the time to determine, I would have.

Q. And your Uncle Harry—he is still alive?
A. Yes, sir.
Q. Did he tell you whether he voted those shares in 1939, 1940, and 1941?
A. Not that I recall.
Q. You would not deny that he told you he was continuing to vote?
A. I would deny, unless somebody could show me something that caused me to recollect that he told me.
Q. Did Mr. Ashcraft tell you he was continuing to vote his shares?
A. Mr. Ashcraft immediately sold his shares. He had a little more judgment than I did.
Q. Did anybody else connected with the shareholders—any one of them—you know their names—I am sorry, I do not—relatives or former employes, ever tell you they were continuing to vote for Mr. Quay as their representative?
A. I do not recollect that they did.
[fol. 3989] Q. But you say you assume?
A. Yes, sir.

Mr. Middleton: May it be understood that Mr. Levis has no stock in Hazel-Atlas?
The Court: He has already said that.

Q. When did you sell your stock?
A. It is a matter of record.
Q. After the TNEC or before?
A. About that time.
Q. After you were invited to testify?
A. No, after our counsel——

Mr. Middleton: Objection, on the ground that it makes no difference whether the stock was sold before or after the TNEC.
The Court: He may answer the question.

A. On the ground that my advisers and counsel felt that if there was some objection to my owning the shares, I would rather have separated with them than to have had controversies, such as this, that interfere with my conduct of my business.
Q. Your counsel told you, did they not, there was some question from a legal standpoint?

A. At no time did we ever question the legal right for a person who knew something about something to own an investment in it. We just thought we would rather not have that profit than to be continuously annoyed in the way we have been.

[fol. 3990] Q. You consider a lawsuit by the government of the United States an annoyance?

A. An interference with our conduct of our business.

Mr. Isseks: Your Honor, at this time I offer the next government exhibit, No. 828, a letter dated February 1, 1935, written by the witness, addressed to R. H. Levis; stipulated as to genuineness by his counsel.

The Court: It will be admitted.

Thereupon, Government's Exhibit No. 828 was read to the Court by Mr. Shields, of counsel for the government.

Q. Did you write that letter, sir?

A. Yes, sir.

Mr. Isseks: Your Honor, at this time I offer as Government's Exhibit No. 829 a letter dated February 6th, 1933, written to Mr. R. H. Levis, signed by the witness; stipulated as to genuineness by his counsel.

Q. At this time I should like to ask you one question, Mr. Levis. I believe on two occasions you testified in response to a question when you sent these letters to Uncle Harry you always sent them to the other directors of the Illinois Glass Company.

A. All of the directors of the Illinois Glass Company.

Q. That means Mr. Edwin Ashcraft, Mr. Charles Levis, and Mr. John M. Levis. Charles was your father?

A. Yes.

[fol. 3991] Q. Is your father still alive?

A. Yes, sir.

Q. Those three gentlemen always received copies of every letter I offered in evidence saying that it went from you to Uncle Harry?

A. I verified that with my secretary, because it did not say on these copies. She said that might not have shown on the original from which these copies were made; but she says on all copies it was her general practice to always do it. When my brother, who owned some shares in that com-

pany, was away from town, he received copies. We may have sent them to others who were interested.

Q. I want to avoid the necessity of additional questions as to every letter addressed to Uncle Harry. Your statement is, subject to correction, which may be made at any time, that copies went to Mr. Ashcraft and your father; and those three gentlemen and yourself were the four directors of Illinois Glass Company?

A. Yes—although this letter indicates that a copy of it only went to Mr. Ashcraft and himself, because they were the only two that asked for approval. I could not say I did not send it to a number of other people.

Q. You mean 828?

A. No, 829.

Q. The one you just read is 828. I think I am confusing you.

A. Yes,—the approval of Edwin and Uncle Harry. I may have had the approval of my father and Mr. John [fol. 3992] Levis. I may have previously given them copies. I am willing to say for the record that unless I specifically designate in saying that a letter did not go to the directors, it is a matter of record that copies did go to the four directors.

Mr. Isseks: I offer in evidence at this time, Your Honor, Government's Exhibit No. 829.

Thereupon, Government's Exhibit No. 829 was read to the Court by Mr. Sheilds, of counsel for the government.

Q. You wrote that letter, did you not, sir?

A. Yes, sir.

Q. Thatcher Manufacturing Company at that time, I believe you have already testified, manufactured approximately 40 per cent of all milk bottles sold in the United States?

A. Yes, sir.

Q. Your company was manufacturing approximately 20 per cent of all the milk bottles sold in this country?

A. This was addressed to the directors of the Illinois Glass Company.

Q. Your Uncle Harry was a director of the Owens-Illinois, too, at that time, according to the records?

A. Until the record shows that he resigned.

Q. He was a director from April 17, 1929, to August 24, 1938; vice-president, from April 17, 1929, to April 18, 1934.

He had resigned as vice-president at this time, but still was a director of Owens-Illinois?

[fol. 3993] A. Yes, sir.

Q. Two directors of Illinois Glass Company, who happened to be two directors of Owens-Illinois, were writing to each other, is that not right?

A. No, the fiduciary of all the shareholders of the Illinois Glass Company, who was president of that company, was writing to the directors of that company, about their making investments in shares in another company of which they knew something about, they being an investment trust for investments in many businesses.

Q. At that very same time, while talking about that in that capacity and they both were directors, Owens Glass Company manufactured 20 per cent of all the milk bottles in the United States?

A. If you want to leave it that way, I will say yes, but this is incorrect. You may want to read it back. You read the wrong name.

[fol. 3994] Q. I will straighten it out for you. At that time Owens-Illinois were manufacturers of 20% of all the milk bottles sold in this country, were you not?

A. Owens-Illinois were manufacturing 27%.

Q. Thank you, sir; and you were the president of that company?

A. Yes.

Q. And a director of that company?

A. Yes.

Q. And your Uncle Harry,—if I may use that phrase, with your permission,—was also a director of that company?

A. Yes.

Q. And the Thatcher Manufacturing Company was manufacturing 40% of all the milk bottles sold in this country?

A. Yes.

Q. Between Owens and Thatcher it was 67% of all the milk bottles sold in the country?

A. Yes.

Q. Were you competing in the same market, sir?

A. Yes.

Q. Did you compete in connection with any other glass containers other than milk bottles in February, 1935? I think that was the date.

A. I will have to find out when they took over Olean. I think I got it in my pocket.

Q. I think the testimony was they took it over sometime prior to that. But we will take your memorandum.

A. It don't show, sir, but it is a matter of record.

[fol. 3995] Q. My recollection is subject to correction, but when Mr. Dugas was here two days ago—no, I guess I won't state it, either, because I did not examine him and my recollection is not clear.

A. My recollection is that it was taken over about the time we bought these shares.

Q. I don't want to make the statement, because my memory is not as clear as it should be.

A. I will get the date and turn it in to the Court at noon.

Q. We are going to have a little progressive testimony right along. Shortly after this time, Thatcher took over Olean?

A. Yes.

Q. Olean was manufacturing in a general line, was it not, of glass containers?

A. Yes, but in certain branches of the general line it had a greater amount of business than in others.

Q. I will get your best recollection. You were interested as president of the Illinois Glass Company, an investment trust of the glass container industry, you were familiar with the nature of the business with Olean?

A. I was familiar with the nature of the business as an individual. Illinois never had anything to do with Olean.

Q. Let's get to that very slowly. You got in the glassware business in 1913, shortly out of college, or out of school, I think you said?

A. Graduated from lawschool in 1913 and went to work in the bottle business a week afterwards.

[fol. 3996] Q. What law school?

A. University of Illinois.

Q. Were you ever admitted to the bar in Illinois?

A. No.

Q. Just graduated. Very interesting. In 1913 you went into the glass container business?

A. No. I went into the batch plant and paper factory and every other division.

Q. I meant a company manufacturing glass containers?

A. I became a common laborer, yes, sir.

Q. In time you arose to the rank of president of the Illinois Glass Company?

A. Yes.

Q. And later, Owens-Illinois?

A. Yes.

Q. By February 6, 1935, you were familiar with the nature of the business of the Olean Glass Company?

A. Yes, and many other businesses, too,—railroad and whiskey and paper.

Q. You knew that information, as an individual that happened to be president of an investment trust and president of a manufacturer of glassware?

A. Do you want to confine this to Olean or do you want to talk about that letter?

Q. I am talking about Olean now.

A. We concluded with that letter?

Q. I am trying to find out whether the Owens-Illinois Glass Company was in competition with Olean?

[fol. 3997] A. You said Illinois Glass Company again?

Q. I said Owens-Illinois.

A. That was my correction to the other question. You said that Illinois made 27% of the milk, and it is Owens-Illinois.

Q. I understand, the Illinois Glass Company at all times from January 1, 1929, was a trust up until the time it dissolved?

A. From April 17th.

Q. Owens-Illinois Glass Company in February, 1935, was familiar with the business, was it not, with Olean?

A. It was in competition with Olean.

Q. In what lines?

A. In the general line and more specifically in the wide-mouth field of general line.

Q. Anything else, sir?

A. I don't remember the breakdown of their business but they were more generally in the packers' and food-container business.

Q. Is it a fair statement to say when you wrote that letter to Uncle Harry and were picking up shares for the investment trust, that Owens-Illinois was in competition both in milk bottles and general lines?

A. It is a definite statement when we were purchasing these shares there was competition between Owens-Illinois

and Olean and Thatcher. I will save time on that and stipulate on items of that kind if you care to.

Q. As long as you answer the question.

[fol. 3998] Mr. Isseks: Government's Exhibit 830, letter dated February 12, 1935, written by the witness to Mr. H. C. Mandeville, stipulated as genuine by Thatcher. I offer it in evidence, but first I want to ask a question.

Q. The gentleman that is referred to here as Stanton Griffis is also a director of Thatcher Manufacturing Company?

A. He was. I don't know whether he still is.

Q. He was at the time of the correspondence?

A. Yes.

Q. And at the time this suit was brought because he is a defendant in this case?

A. Yes.

Q. And also was at that time one of the senior members of the brokerage firm of Hemphill, Noyes & Company?

A. He was at that time, but I understood he retired.

Thereupon, Government's Exhibit No. 830 was read to the Court by one of counsel for the government.

Q. You wrote that, sir, did you not?

A. Yes.

Mr. Isseks: At this time I offer Government's Exhibit 831, a letter dated February 14, 1935, written by the witness to Mr. J. H. McNash, stipulated genuine by Hazel-Atlas at page 8 of the Stipulation.

The Court: It may be admitted.

Thereupon, Government's Exhibit No. 831 was read to the Court by Mr. Kramer, of counsel for the government.

[fol. 3999] Q. Did you write that letter, sir?

A. Yes.

Mr. Isseks: At this time I offer in evidence as Government's Exhibit 832 letter dated February 16, 1935, written to Mr. J. H. McNash by the witness, stipulated as genuine by Hazel-Atlas at page 8 of the Stipulation.

The Court: It may be admitted.

One of Government's Counsel reads Exhibit 832.

Q. Did you write that letter, sir?

A. Yes.

Q. Do you remember now whether Mr. McNash and you purchased shares of stock by a group from the Thatcher Manufacturing Company,—did Mr. McNash participate in this purchase?

A. My first letter to R. H. Levis indicates him as one of the group and my recollection is he bought some.

Q. Do you remember approximately how much?

A. No. I would think maybe it was a thousand shares.

Q. Mr. McNash's company was in competition with Thatcher too, was it not?

A. After they acquired Olean.

Q. Whatever date it is?

A. Yes.

Q. Was Thatcher selling milk bottles on the west coast?

A. I don't know.

Q. If they were selling milk bottles on the west coast then it was competing with the sale of milk bottles on the west coast?

A. I would say hypothetically if they were doing it he [fol. 4000] would have been.

Q. During the period that Mr. McNash held the stock of Thatcher which you said he acquired in connection with this group they were competing in the general line of packers' ware?

A. The record would show whether he did or not acquire the stock. I am not sure if he did, but my recollection is he did.

Q. It is a fair statement that you were organizing the group that acquired this Thatcher stock?

A. Oh, no.

Q. Who organized it?

A. The group always came to me. I did not go out and get people in the thing. The Illinois Company were going to buy 10,000 shares of stock and Mr. A. C. Levis came to the Illinois Board meeting and sat around there. It was always a friendly family affair in which we talked over these investments, and I said I would like to buy 3,000 shares. Ben Hazelton wanted to buy some shares and McNash wanted to buy some shares. We had been successful in the peak of the depression in having made a couple other investments and a number of our friends took a participation in those investments and they turned out to be profitable, and women, like widows whom I knew in

Toledo and Chicago, would take advantage of it. I would imagine that list was long.

Q. How many would you say.

[fol. 4001] A. Maybe 25. It is a matter of record.

Q. Mr. McNash was one?

A. It is my recollection he was, although he may not have been.

Q. The correspondence indicates he was?

A. The correspondence indicates up to that date I wanted to talk about it and I was eager to know whether he was or was not.

Q. Was any other executive in the Glass Container Manufacturing Company in this group of 25 other than McNash; you say that is your recollection, Mr. Hazelton, the gentleman you mentioned, Mr. A. C. Levis, and some people in the Owens-Illinois?

A. I can bring this afternoon a report made to S. E. C. They checked the whole transaction and gave us a clean bill of health on it.

Q. You mean they wrote you a letter and said it is all right?

A. Yes. If I have that letter I will bring it.

Q. Bring it along. I would like to have it.

A. The question they had was why we did not report we had more than 10 per cent of the shares when we had more than 10 per cent, and the shares were all in an account in my name, and I had no title to those shares that were in my name. I was the street name on the shares.

Q. You were the managing agent for the group?

A. No. I was that street name for the shares.

[fol. 4002] Q. You were organizer for the group?

A. No.

Q. You were the fellow everybody contacted?

A. That is too complimentary.

Q. What was your function you had in the whole deal; in the whole arrangement? I will take your answer.

A. I was the Syndicate manager.

The Court: You may suspend at that point. The bailiff may recess court for fifteen minutes.

(Recess 15 minutes.)

[fol. 4003] The Court: Proceed.

Q. Mr. Levis, you said something about the freight problem in connection with milk bottles on the coast. Who manufactures milk bottles on the coast right now, as far as you know?

A. The Owens-Illinois Pacific Coast Company, and Hazel-Atlas; but everyone, I understand, has the right to make them.

Q. Since the fall of 1940, or whenever it was?

A. Now, you said.

Q. Yes, I mean now.

A. Yes.

Mr. Isseks: At this time I offer in evidence Government's Exhibit 833, letter dated August 8, 1935, addressed to Mr. H. C. Mandeville, by the witness, stipulated as genuine by Thatcher, page 15 of the stipulation.

The Court: It may be admitted.

(Government's Exhibit 833 read by Mr. Shields.)

Q. Did you write that letter, sir?

A. Yes, sir.

Mr. Isseks: At this time I offer Government's Exhibit 834, letter dated July 25, 1936, written to Mr. R. H. Levis, signed by the witness, stipulated as genuine by his counsel.

Mr. Emery: If the Court please, I would like to have an objection, if I have the date right, July 25, 1936?

Mr. Isseks: July 25, 1936.

[fol. 4004] Mr. Emery: An objection on the ground this document is not admissible as proof of any matters therein stated, as against the Thatcher Manufacturing Company, and the individual defendants associated with it, and particularly the last paragraph.

TheCourt: You may have your objection. It will be admitted.

Mr. Isseks: I would like to have it read.

(Government's Exhibit 834 read by Mr. Shields.)

Q. You wrote that letter, did you not?

A. Yes, sir.

Q. First of all, by that time Olean was clearly a wholly-owned subsidiary of Thatcher?

A. Yes, sir.

Q. And the conversation you referred to in the last paragraph was had with Mr. William Mandeville, was it not?

A. Yes, sir.

Q. And Mr. William Mandeville represented your stock interest in the same way that Mr. Quay represented your stock interest in Hazel?

A. No, sir. Mr. Quay was an officer of the Hazel-Atlas Company and probably would have been on their proxy committee anyway, and Mr. William Mandeville was a lawyer who had gone on the board, and not an employee of the Thatcher Company.

Q. Well, my question was whether he represented your interests in Illinois Glass in the same manner Mr. Quay represented your interests in Illinois Glass in Hazel?

[fol. 4005] A. My answer is just as I stated it, sir.

Q. You have testified, given a number of answers when the questions were put to you as to the manner in which you considered Mr. Quay represented your interests. I want to know if in the case of Thatcher, Mr. Mandeville represented your interests in the same manner?

A. The only distinction I make is that Mr. Quay, at the Hazel-Atlas Glass Company, may have been on their proxy committee to have voted numerous shares of shareholders and ours; while Mr. Mandeville, of Elmira, N. Y., in becoming a director, might have required our shares in addition to other shares to become elected.

Q. That was a clearer case than the other case?

A. We asked him to and he said he would.

Q. And he represented you on the board of Thatcher as a director?

H. He represented our shares on the board of Thatcher.

Q. He became a director after July, 1936, and has continued to be a director to this date, so far as you know?

A. So far as I know.

Q. He is a defendant in this case,—for the record?

A. Now, to clear up that matter, because of his being a defendant in the case, after he was elected to the board and he represented us, at no subsequent time was he ever requested to represent us. Now, it was his option, and probably when he became an employee which made him a defendant in this case, he may not have been representing us.

Q. He was a director. I don't know whether he was an officer of Thatcher.

[fol. 4006] A. I think he is.

Q. But your Illinois Glass Company, until its dissolution, continued to vote its stock in Thatcher for Mr. William Mandeville?

A. No, sir, only that one time.

Q. Never voted thereafter?

A. I don't know.

Q. You acquired some stock in Thatcher after the dissolution of Illinois Glass, after September, 1938?

Mr. Middleton: You mean after or as part of the dissolution?

Mr. Isseks: As part of the dissolution.

A. As a part of the dissolution I acquired some, yes, sir.

Q. That is what I mean. How many shares, how much was it?

A. It was less than a thousand shares.

Q. And did you continue to vote that stock for Mr. Mandeville?

A. No, sir; I just sent in the proxy to the proxy committee, and he may or may not have been a member.

Q. But it is pretty clear you were responsible for having him put on the board, and he went on the board as your representative?

A. No, sir; the letter said Mr. William Mandeville is going on the board. That is, he was requested to go on by others. Having that arrangement, I asked him if, as a member of the board, he would represent our shares.

Q. Did he give you information thereafter as your representative?

A. No, sir, I don't think he did. I continued to get in-
[fol. 4007] formation from his father.

Q. Mr. William Mandeville is the son of H. C. Mandeville?

A. Yes, sir.

Q. They are both lawyers, are they not?

A. Yes.

Q. Don't you remember Mr. William Mandeville wrote you from time to time giving you various facts about the company?

A. He may have.

Q. I direct your attention to testimony you gave before the TNEC at page 480, and I direct your attention to the

page marked, the question and answer, and ask if that does not refresh your recollection that he did?

A. If I testified to it there, that is correct, sir.

Q. May I read it?

A. Yes, sir.

Q. "Q. I want you to explain what the situation is: did he keep in contact with you regarding the situation?" (Referring to Mr. Mandeville.)

A. He wrote to me from time to me, giving me facts."

Mr. Wall: Referring to Mr. William Mandeville?

Mr. Isseks: Yes, sir, and referring in both cases to William Mandeville.

Mr. Middleton: May I interpose at that point to ask whether he desires to clear the record as to Mr. Levis' present holding?

Q. Did you sell your stock in Thatcher at the same time [fol. 4008] you sold your stock in Hazel-Atlas?

A. About the same time, that is, within the year.

Q. And for the same reason you sold your stock in Hazel-Atlas?

A. Yes, sir.

Mr. Isseks: At this time I offer in evidence as Government's Exhibit 835, letter dated September 9, 1936, addressed to the witness by H. C. Mandeville, stipulated as genuine by Thatcher at page 20 of the stipulation.

The Court: It may admitted.

(Government's Exhibit 835 read by Mr. Kramer.)

Q. Did you receive that letter, sir?

A. I received this letter. I have no recollection of the letter that was referred to as being attached, as I didn't know Mr. Case.

Q. We haven't got it either, otherwise I would show it to you. I am trying to find out if you have any recollection of any conversations thereafter with Mr. H. C. Mandeville in an effort of finding some way to putting his idle money to use.

A. I talked with him about that all the time, but he was Scotch, and that was always on his mind.

Q. Did you advise him, sir?

A. Frequently.

Q. Did he take your advice?

A. I worked out numerous plans, but at the end of all the trading talk and discussion, Thatcher was still the same Thatcher that it was way back before we started to talk.
[fol. 4009] Q. Those plans all related to the expansion of Thatcher and the acquiring of other glassware manufacturers?

A. I had the theory, Mr. Isseks, the motor industry had been a good industry because it had gotten itself into four or five big companies, and the tire industry had been a good industry because it had done that, and they paid high wages and reduced their costs, and a lot of things of that kind; and I felt if I could get the glass industry, which we had worked in for sixty-odd years, in that kind of shape, why, I would talk to anybody about it or any phase of it.

Q. In other words, you were interested in bringing about a situation in the glass container industry similar to the situation in the automotive industry?

A. I didn't really try to copy any, but I felt you could have better research work, better wages and better earnings, and lower cost of product by having these units. I didn't know there was anything wrong in talking about it. I talked about it; I was the crusader for it.

Q. You were interested in bringing about three large units in the glass container industry?

A. No, sir. I might have wanted to have had ten large ones. I mean, it wasn't anything that confined itself to a specific thing.

Q. You volunteered the statement, that is why I am going into it.

A. A group of large companies. I wouldn't say three, or five—certainly more than two.
[fol. 4010] Q. You were interested in bringing about a situation in the glass container situation whereby, to use your words, there would be three, or four, or five large companies?

A. That is right.

Q. And you were interested in bringing about a situation where there would not be any small companies any more?

A. No, no. I think it is fine for the tire industry there are some small rubber companies, and I think it is fine for the automotive industry that there are some small companies; and I think it would be fine for the glass industry if there were a lot of small glass companies, but it is better for them if they have a few large ones. It is my opinion.

Q. You were interested in bringing about a situation comparable to the situations you mentioned, namely in the automotive industry and the tire industry, where there would be three or four very large companies?

Mr. Middleton: I beg pardon, but I object to the quoting of the witness wrong. He has at no time said three or four.

Mr. Isseks: I will have it read back. He said three or four or five.

Mr. Middleton: He said as many as ten, I think the record will show he didn't know how many.

Mr. Isseks: I am going to have it read back. Go back to the last question or two.

Mr. Middleton: You misquoted him in your last question. [fol. 4011] Mr. Isseks: The witness can take care of himself. He is a graduate of a very good law school, and a capable executive head of very large companies.

(Previous question and answer read:)

"Q. You were interested in bringing about three large units in the glass container industry?

A. No, sir. I might have wanted to have had ten large ones. I mean, it wasn't anything that confined itself to a specific thing.

Q. You volunteered the statement, that is why I am going into it.

A. A group of large companies. I wouldn't say three, or five—certainly more than two."

Q. How many did you have in mind as your idea?

A. Well, I couldn't state, Mr. Isseks, just what I had in mind. I was working on a general theory that I believed. Well, say, ten or less large companies in the industry.

Q. Let's go on, I will come to that later on, since you brought it out. You did bring about Owens-Illinois, did you not?

A. I did my best to, because I was proud of it.

Q. You brought about, before you got through, Anchor-Hocking, did you not?

A. No, sir.

Q. You invested a million and a hundred and twenty-five thousand dollars in Anchor Hocking, and if it wasn't for that money they couldn't have brought about it; don't you know that?

[fol. 4012] A. I know there were letters to that effect. I made the investment in Hocking, as I stated it here the other day. The Anchor Hocking investment is a long story, and you have got a lot of papers.

Q. We will get to them.

A. You will come to that. If you want me to specify I will do it now.

Q. Could they have had the merger of Anchor Hocking without the investment of Illinois Glass Company of over a million dollars?

Mr. Fuller: I object as calling for a conclusion.

The Court: Overruled, he may answer.

A. Yes, sir.

Q. You tried to bring about a Thatcher merger with other companies?

A. No, Mr. Mandeville tried to get me to help him to do it.

Q. And you did help?

A. I talked. I never helped.

Q. What did the talk consist of?

A. Oh, it consisted of everything from having plants all over the country, and Thatcher joining Hazel, and we talked about things like that all the time. Those were the things we were interested in, instead of horse races and the ball game. When we met we wove out these big stories about these companies. Take your Obear Nester situation. I bet twenty times in my career they have asked me to help them sell, or people have thought they might want it, and [fol. 4013] they came to me on things of that kind. I have done a lot of talking on that. But the net result, for just practical purposes, is that Mr. Joseph Nester, Sr., was a partner of my grandfather, and a blacksmith in our factory, and he left us because he was overly ambitious, just like I was, and he started his factory. It was three furnaces. And at the end of sixty-odd years it is still three furnaces. They have been talking about selling out all the time during the sixty-odd years, they are still talking about selling it. I didn't think there was anything wrong about my talking to my friends about these things, and we have on paper all kinds of plans but not doing anything about it. The purpose was to bring about a big combination to lower costs and make glass more competitive with other types of con-

tainers it was in competition with, and we pretty much succeeded.

Q. How many combinations did you bring about?

A. One.

Q. Owens-Illinois?

A. Yes.

Q. Had nothing to do with Anchor Hocking?

A. I probably talked about it. I talked about everybody's combination. They all came to me about it. I personally took the option on Olean and took it over to Mr. Mandeville, who was acting as my lawyer in the taking of it, and the Thatcher people wanted it. I said, "Take it". I didn't even get my railroad fare. He wanted to pay my hotel bill of $2.00 and I didn't let him do it.

[fol. 4014] Q. You lost money on it?

A. I lost the railroad fare.

Q. In the case of Anchor Hocking, it is a fact you were responsible as president of Illinois Glass Company for putting up more than a million dollars to bring it about?

A. No, sir, it would have been brought about without my putting the money up.

Q. Did you put the money up?

A. In investing, as I stated the other day under oath, a million and a hundred and twenty-five thousand dollars in the common shares of the Hocking Glass Company.

Q. You were president of the company?

A. I was the fiduciary representing the board, yes, sir.

Q. At the same time you were president of the Illinois Glass Company?

A. Yes, sir. I was also a director of National Distillers, and a director of a paper company, and a lot of other things.

Q. National Distillers was not in competition with Owens-Illinois?

A. They are customers.

Q. Was National Distillers in competition with Anchor Hocking?

A. No, except Anchor Hocking would like to have their bottle business. When you get into those things, let's get into the papers,—not generally, because you are taking a lot of time to talk about this.

Q. You anticipated it in talking about the efforts to make [fol. 4015] a combination.

A. Only in the answer to your question, sir.

Q. At this time I show you Government's Exhibit 173, which is a letter you wrote under date of January 29, 1927, when you were vice-president and general manager of Illinois Glass Company, and I ask you first if that is your signature at the end thereof?

A. Yes, sir.

Q. Now, I direct your attention to the first three paragraphs. I would like to have you read the first one and then I will ask you about the second and third.

A. I have read that.

Q. That was about the time you were getting the right from Hartford to manufacture fruit jars, Illinois Glass Company?

A. My recollection is we always had a kind of option to have a right.

Q. You didn't start in until about that time?

A. About that time.

Q. In the second paragraph you say: "Both Hazel and Ball welcome us to the fruit jar field". At that time those two companies were very large manufacturers of fruit jars, were they not?

A. Oh, there were two or three others, I think; I don't know.

Q. They were the large ones. Ball has always been the largest one since you can remember?

A. Yes, except in the East and New England I think [fol. 4016] Hazel is larger.

Q. I am talking about the United States.

A. Yes.

Q. And Hazel was second-largest. "Both Hazel and Ball welcome us to the fruit jar field to the limited extent in which we intend to participate, because we have really made a market and a cap connection that prevent others from entering this field in a way that might disturb the future market." Your license from Hartford was not limited, was it, on its face?

A. I don't know whether it ever was, but——

Q. That is what I mean. Owens-Illinois succeeded to Illinois' rights?

A. That is right.

Q. You say, although it wasn't limited as a fact, you say, "to the limited extent in which we intended to participate"?

A. You have to go back farther than that. Hartford wanted to sell Ball Brothers their right, but Ball Brothers didn't want it, if there were too many wanting it. They had more than that under the exclusive, under the suction machine license. I was trying to induce Goodwin Smith to give Illinois this right.

Q. Did you have it at that time, 1927?

A. I was trying to induce him to give up the right. He was also complaining that we didn't take the right. I might comment that the Cupples Company, who had sold certain items for us for years, came in and took a contract to sell the jars we produced, exclusively, and we agreed to sell [fol. 4017] Cupples all the jars that they could sell and not to sell them through any other channel. The Cupples Company, for practical purposes, had two or three hundred salesmen and they all operated in a zone in the country. That is what I may have meant by "limited". At no time did I ever limit the production of any company in which I was interested, in fruit jars.

Q. I will read the next paragraph:

"I am quite certain that our activity will tend to hinder Ball Brothers extending their activity into the packers' field, because of the fact that we can become more aggressive in the fruit jar field were they to do so."

To what did that refer?

A. Oh, that might have been trading talk. If they had gotten fresh in some other field, we might have gotten Cupples to give up their exclusive, and hired two other fellows like Cupples and gone into it.

Q. You wrote it, didn't you?

A. Sure, I testified I wrote it.

Q. Do you remember after the decision of the Circuit Court of Appeals for the Third Circuit, and the various contracts executed sometime in the latter part of July—I think July 21, as of July 1, there was an effort to get as many of the non-licensees into the fold,—to use an expression that has been used by various witnesses in pieces of paper,—and in that connection do you remember there was an effort to get in Ball Brothers?

[fol. 4018] A. You will have to give me a year on that. You are asking about a suit in a circuit I don't know anything about.

Q. Go back a little. Do you remember the Circuit Court of Appeals in the Third Circuit, on May 6, 1932, you have testified already, reversed Judge Gibson, and after that Hazel became a licensee and participates in one-third of the royalties; do you remember that?

A. Yes.

Q. And you testified about that yesterday?

A. I don't identify the royalties without a date.

Q. Then you remember after Hazel came in there there was a parade, Knox came in, Lamb came in, Universal came in, Maywood came in, Latchford came in,—do you remember all that?

Mr. Goodrich: I will make the objection Mr. Isseks anticipates to the word "parade" and ask it be stricken out.

The Court: Overruled.

Q. You remember that, sir?

A. Yes, sir.

Q. Do you remember in that connection there were conversations between you and Mr. Goodwin Smith and Mr. McNash with regard to the desirability of getting Ball Brothers in as a licensee?

A. Sure.

Q. You remember that. Now tell us your best recollection of the conversation.

A. Well, my best recollection,—if you will give me a [fol. 4019] specific conversation,—but generally, if you want a general statement, I will make it.

Q. What is your best recollection as to what was said by you gentlemen in an effort to get Ball Brothers in? Did you talk about it?

A. Yes.

Q. What did you say? We weren't there. I want to try to find out what you people who were there said.

A. I said I wanted them to take a license. I thought it was a fine thing for them to take a license.

Q. Anything else?

A. I talked about it at length. If you will tell me specifically what you want me to affirm or deny I will try to do it, but to take a big subject like that, we will be talking about it a long time if I state all my recollections.

Q. I will take your recollections. I am perfectly willing to stay here to have you tell me. That is my job. Unless the Court objects?

If he wants to state his recollections, we are entitled to have them.

The Court: Go ahead. I think your question might be more specific.

Q. Shortly after you got these licensees in, did you and McNash and Mr. Goodwin Smith have a conversation about an effort to get in Ball Brothers?

A. We had several conferences.

Q. Tell us about the conversations; what did you say and [fol. 4020] what did Mr. McNash say and what did Mr. Goodwin Smith say?

A. Goodwin Smith wanted them to come in. I wanted them to because I thought I got half of the back damages. And Ball wanted as exclusive a license as they could get for fruit jars.

Q. Did Ball Brothers, any of the Ball brothers, participate in these conferences that were called?

A. Not that I recall.

Q. They were never present?

A. I may have had conferences with the Ball Brothers at which Mr. McNash and Mr. Smith were present; or I might have had conferences with Mr. McNash and Mr. Smith at which the Ball Brothers were present; I don't remember the particular conferences.

Q. Do you remember any conferences at which the Ball Brothers were present with you about this subject-matter?

A. No, sir.

Q. You wouldn't say they were present?

A. No, I said I might have had conferences with Mr. McNash, Mr. Smith and others, at which Ball Brothers were present, or I might have had conferences with Ball Brothers at which others were present.

Q. Do you remember any of the details of the conferences with Mr. McNash and Mr. Goodwin Smith about the effort to get Ball Brothers in, other than what you testified?

A. Yes, sir, I went all through the Ike Collins and the General Glass Company's having some license, and that being given up, and we talked about it, that phase.

Q. What was said and by whom? You mentioned Ike [fol. 4021] Collins and General Glass. What was said; did somebody make a request of you or say something to you? You volunteered the statement as your recollection. Tell us what happened, please.

A. I volunteered it as a recollection, but that was my recollection that it happened.

Q. No more?

A. I would much prefer to know the specific thing you want to talk about. If you want me to ramble on about recollections, I will say that that is practically all my recollection.

Q. See if I can refresh your recollection. Do you remember Mr. Goodwin Smith told you the only way they could get Ball Brothers as a licensee was to give Ball Brothers everything that Hartford could, residual rights, and get the General Glass Company to give up its rights to manufacture fruit jars?

A. I remember Goodwin Smith talking with me about that, and I think that was their point of view, but I didn't share that.

Q. Do you remember Goodwin Smith told you Ball Brothers wanted that?

A. Yes, sir.

Q. Do you remember Goodwin Smith told you Ball Brothers also were insisting Hazel-Atlas limit its annual production of fruit jars to 300,000 gross a year?

A. Yes, and they even insisted we limit ours.

Q. What did Ball Brothers insist as far as your company [fol. 4022] was concerned?

A. I don't remember the amount, but you have it there.

Q. My remembrance is 100,000 gross a year, you should limit your production?

A. I think it was; yes.

Q. Do you remember Ball Brothers stated that there were other people manufacturing fruit jars, and something should be done to put an end to their manufacturing fruit jars, some kind of an arrangement should be made; do you remember that?

A. That is not very specific.

Q. All right, I will be a little more specific.

A. There were other people——

Q. Do you remember Ball Brothers said that Knox were using a suction machine of some kind, and something would have to be done so they would not manufacture on it?

A. Ball Brothers didn't tell me.

Q. I am asking whether F. Goodwin Smith told you that?

A. Goodwin Smith may have talked about it, I don't remember it specifically.

Q. Did Mr. McNash say it?

A. Mr. McNash may have been there when we talked about it, and talked about it also; I don't remember it specifically.

Q. Do you remember Ball Brothers insisted Brockway was manufacturing fruit jars on some type of equipment and they should stop manufacturing fruit jars?

A. No, I don't remember Brockway.

Q. You have a sort of hazy recollection about Knox?

[fol. 4023] A. I have a recollection it was a general topic, Ball Brothers wanted a Hartford license only if it could be as exclusive as practical for fruit jars.

Q. Its rights should be very broad and everybody else restricted, was that Ball Brothers' position?

A. They would like to have it like they had in suction, I presume; that was the way the industry grew up.

Q. What was your recollection of what they were insisting on? They wanted General to give up the right; you volunteered that?

A. Yes.

[fol. 4024) Q. Do you remember that in that connection you and Mr. McNash met Mr. I. J. Collins at White Sulphur Springs in the summer of 1932?

A. Yes.

Q. What was the occasion of meeting down there?

A. It was a Glass Containers Association meeting, general jollification. My brothers joined me there. I had not been home for a long time. My father was there, Mr. Ball, Mr. Root, and his son. We had finished the Glass Container meeting and we were sitting around having a family talk. I remember the meeting thoroughly.

Q. Do you remember the conference you and Mr. McNash and Mr. I. J. Collins had at the Glass Containers Association meeting in the summer of 1932 at White Sulphur Springs—you talked about this Ball Brothers' request?

A. Yes.

Q. Tell us that.

A. We told him he ought to give up his license. He wasn't using it and we thought he should let Ball Brothers come in and take the license.

Q. You were making that request because of your interest in that one-third participation?

A. It was not a request. It was a discussion.

Q. I think you just said,—you told them, I think those were your words?

A. We talked to him about it. I will change it that way.

Q. You object to "you told him"?

A. No, I don't object.

[fol 4025] Q. You volunteered that statement?

A. All right, sir.

Q. What did I. J. Collins say?

A. That seemed to be quite a difference of opinion. We thought he said he would and he thought he said he would not.

Q. What is your recollection of what he said?

A. That he would do it.

Q. You were interested in the fact you were entitled to get royalties?

A. Yes.

Q. Mr. McNash was interested also in the same thing?

A. He didn't get any damages.

Q. He got part of the split if I may quote from Mr. Carter?

A. Yes.

Q. Your recollection is Mr. I. J. Collins said he would do it. What was said about getting paid?

A. I think that became the moot question.

Q. What is your recollection what he said, you keep telling us what happened later on?

A. I thought he was willing to do it for nothing.

Q. Your present recollection is, and your recollection for some time thereafter was that he said he would do it for nothing?

A. No. My recollection of the discussion was that he would do it for nothing.

Q. Was there any further discussion at the meeting at White Sulphur Springs?

A. Not that I recall.

[fol. 4026] Q. Was Mr. F. Goodwin Smith at the meeting?

A. I don't think so.

Q. After the meeting did you have occasion to tell Mr. F. Goodwin Smith about your conversation with Mr. I. J. Collins?

A. I probably did.

Q. What is your best recollection, sir?

A. I did do it.

Q. Did you tell him at that time that you were going to take the matter up further with Mr. I. J. Collins?

A. I may have. I don't recall having told him that.

Q. Did you tell Mr. F. Goodwin Smith that you felt it was necessary that Ball Brothers become a licensee and that it would be suicidal to put up any barriers which would mean that Ball Brothers were on the outside and had to be dealt with in an unfriendly rather than a cooperative and friendly way?

A. I never felt that strong on anything.

Q. I am showing you Government's Exhibit 178, a letter dated October 10, 1932, written by F. Goodwin Smith, addressed to I. J. Collins. Directing your attention to the bottom of the first page where Mr. F. Goodwin Smith says, "I told them"—referring to the Ball Brothers—I can't tell whether that refers to Ball Brothers or Messrs. Levis and McNash. I think it refers to Ball Brothers. Unless somebody disagrees with me, I think it means Ball Brothers.

A. I would not like to get pernicious on this subject. [fol. 4027] I would like to get specific. It is important to me.

Q. Yes, I think it is.

A. Don't read into it something that is not there. Let's take that letter as a whole letter, sir.

Q. All right. It starts in, "A few days ago I spent seven and one-half hours with Messrs. Ball Brothers in New York City, and I came away from the conference with a definite proposal on their part.

First, they are willing to consider a very sizable sum in payment of damages.

Second, they are willing to take a non-exclusive license on a restricted number of feeders.

Third, they are willing to come to an agreement with us on all their patent rights.

All negotiations, however, depend upon two factors; first, that we will not license others on fruit jars for domestic household trade, and, second, that General Glass will

cancel their right to make fruit jars for the domestic household trade.

Subject to a further conference with Messrs. Levis and McNash they are ready to have us prepare the papers but state they will not sign the same until we are in a position to say that General Glass have cancelled their rights.

I told them I thought you would be entirely willing to fulfill your promise to Messrs. Levis and McNash made at White Sulphur Springs, namely, that General Glass would [fol. 4028] cancel their rights inasmuch as the fruit jar business is a special business and one which takes a great deal of money and a special organization to handle on any basis which could possibly be considered as profitable."

Up to there your recollection is the same, isn't it?

A. Yes.

Q. Now, coming to the next paragraph where apparently you differ with Mr. F. Goodwin Smith, maybe you don't,—

"In talking with Will Levis this morning about the situation he told me that he was going to take the matter up with you by telephone as he felt it was most necessary that Ball Brothers became a licensee, and that it would be suicidal to put up any barriers which would mean that Ball Brothers were on the outside and had to be dealt with in an unfriendly rather than a cooperative and friendly way"?

A. I am in accord with the thought but not to that degree. Certainly he was more extreme than I have been on this or any other matter, sir.

Q. Then he says, "I think Messrs. Ball Brothers will want to confer with Hazel and Owens before we have the final papers drawn, and will you not also make a point of seeing Levis and McNash, as I do not want to leave the door open for hitches which would hold up or disrupt this important set of negotiations.

I think you can trust me, Ike, when I tell you that if you [fol. 4029] send us the proper authority to cancel the fruit jar rights in General's contract I will not exercise this right until Ball Brothers have signed up, but if for any reason you feel you would first like to go over the matter again with Levis and McNash, please do so within the next few days if you can get ahold of time".

A. If you can get hold of "them".

Q. "Them". Excuse me. Did you talk to those gentlemen again?

A. Yes. I presume we discussed it with Mr. Collins.

Q. Before I go any further, on the top of that exhibit, first page, there is an indication you got a copy of the letter?

A. Yes. I did.

Q. You did not write back to Mr. Smith and say you objected to the word "suicidal"?

A. I did not feel I was obligated to.

Q. Did you talk to Mr. Collins about it after you got that letter?

A. I think I did.

Q. What was the conversation as you recall it?

A. I told him I still felt if he never used the license he ought to give it up.

Q. What did he say?

A. He said he felt that it was worth something.

Q. What did he say further and what was the outcome?

A. The outcome was he got a hundred thousand dollars I think.

[fol. 4030] Q. Were you instrumental in seeing that he got a hundred thousand dollars?

A. No. It came off of Hartford's half. It didn't come off of ours. They bought it.

Q. Did you have anything to do with the negotiations resulting in the payment of a hundred thousand dollars?

A. I probably sat around there a little but I don't think I had any effect.

Q. Did you try to get him to take less?

A. No. I took the position it was either a free right or if they were buying it it was up to them to negotiate the price. That was none of my business.

Q. Did you see Ball Brothers in connection with this matter in trying to work out what rights Ball Brothers had?

A. I may have.

Q. Do you have any recollection of it?

A. Not a specific meeting.

Q. I show you Government's Exhibit 179, telegram from F. Goodwin Smith to Frank C. Ball, dated October 17, 1932. It says, "Thanks for your letter of 14th. I am very anxious to make some definite headway on our negotiations with you due to pressure from outside parties Stop Could you not plan meeting with Levis and McNash latter part of this

week in order to settle question of non-exclusive license on general container field". Do you have any recollection of [fol. 4031] seeing F. C. Ball or McNash?

A. I think there are several letters there that show he did not come until a later date, but when he did have that conference I was there.

Q. Tell us what happened, sir?

A. They were still talking about the fruit jar license but I don't know that I could specifically state what was done.

Q. Do you have any general recollection, sir?

A. No. I don't believe I have any, sir. You see, Ball Brothers still had a suction contract with us at that time.

Q. I understand it, sir. My questoin is whether you have any recollection of any of the conversation with Mr. Frank Ball in regards to the subject matter, fruit jar rights?

A. No further than I stated. I would like to have my memory refreshed.

Q. I show you Government's Exhibit 723, a letter dated January 21, 1933, from C. B. Belknap to F. Goodwin Smith, on the stationery of the Owens-Illinois Glass Company, "Mr. Levis has just told me of his conversation with you and asked me to send you on the clause containing the description of fruit jars under which Ball Brothers were licensed on the Owens machine." Then he sets it out. Then he says at the bottom of the page, "I also understand from [fol. 4032] Mr. Levis that Mr. Ball's attorney is tied up in court the first part of the week and cannot reach New York until about Thursday. Under the circumstances, I will arrange to arrive in New York about Thursday morning in place Monday as had previously been planned." Do you remember the conversation you had with Mr. F. Goodwin Smith which resulted in your telling C. B. Belknap to send to F. Goodwin Smith a description?

A. No. I don't recall that specific conversation. I don't deny that I had one.

Q. Do you remember as a result of conversations that you had in New York with F. Goodwin Smith and Mr. Ball there was submitted to your legal department a proposed contract limiting the quantity of fruit jars to be manufactured by your company in any one year?

A. Yes, I remember it.

Q. Do you remember you turned that contract over to the legal department and asked them to express their views in regard to the form of the contract?

A. I did not even recall the contract until the question came up—the specific writing—until the question came up at the TNEC.

Q. I am talking about the fact a general contract was submitted to you. You knew about it at that time?

A. As I understand your question to say that I turned the contract over to my legal department and I answer that by saying I do not recall having turned the contract over [fol. 4033] to my legal department.

Q. Do you remember generally a contract was submitted to you, a contract prepared by Colonel Brown?

A. I so stated.

Q. You do remember that?

A. Yes.

Q. That contract,—draft, let's call it,—proposed the limitation of your company's production of fruit jars in the United States to 100,000 gross a year?

A. That is a question of fact, sir, in the contract. I don't remember it.

Q. Well, would you like to see it; maybe I can if counsel for Owens produces it. We never had it.

A. It was at the TNEC.

Q. Do you remember that problem came up, raised by you with Mr. Carter as to what would happen in case the total production in the country was way beyond what was contemplated at the time?

A. We were never concerned with that.

Q. I will show you Government's Exhibit 646. See if that does not refresh your recollection that you were the one that raised it. The first sentence has nothing to do with it,

"Proposed amendment received from Brown makes no provision for increase of production beyond 100,000 based upon increase in total production. Mr. Levis wants to know if this increase arrangement is being taken care of"?

[fol. 4034] A. I might have wanted to know because I didn't think unless that was arrived at that the contract would ever go through. But I never was interested that anybody had any up-season thing where you had a fruit crop

in one part of the country and not in another. That was a thing Mr. McNash was concerned about, not me.

Q. You do not dispute what Mr. Carter said in the telegram?

A. No. I said if I was interested in it I was interested in it for the purpose of seeing that everybody was in agreement if the contracts went through.

Q. You don't dispute you talked to Mr. Carter at that time, vice-president at that time?

A. No.

Q. Of course you were interested in the reply he got, Government's Exhibit 647, were you not?

A. I was.

Q. Addressed to Henry W. Carter and signed by C. B. Belknap?

A. I don't dispute this.

Q. "Can meet Barnett Thursday with you stop Brown understands provision will be made for increase but I will talk with Mr. Levis on my return stop". You don't dispute that?

A. No.

Q. Did Mr. Belknap talk to you when you came back?

A. I don't recall. I don't dispute he did.

The Court: You may recess court until two o'clock.

(Noon recess.)

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[fol. 4035] Friday, 2:00 P. M., April 18, 1941.

The Court: You may proceed.

Q. Mr. Levis, in Government's Exhibit 646, a telegram from Mr. Carter to Mr. Belknap, dated February 6th, 1933, Mr. Carter says:

"Proposed amendment received from Brown makes no provision for increase of production beyond 100,000 based upon increase in total production. Mr. Levis wants to know if this increased arrangement is being taken care of."

That amendment that was received by your company was the result—I mean the paper, the draft—of conferences had by you with Mr. F. Goodwin Smith and with Ball Brothers?

A. I think so, yes; but I cannot tell you specifically the time.

Q. In Government's Exhibit No. 647, a reply telegram addressed to Mr. Carter, dated February 6th, 1933, signed by Mr. Belknap, where Mr. Belknap says, "Brown understands provision will be made for increase, but I will talk with Mr. Levis on my return"; somebody has put on the top of it: "This proposed agreement never signed". Is that your recollection?

A. The agreement was never signed, no.

Q. Why not, sir?

A. I don't think it would have been a legal agreement. I would not have entered into it.

Q. Were you told by somebody that it was not a legal agreement?

[fol. 4036] A. I was ultimately told; but my own opinion was that if we had had no license, we might have taken a restricted license; but, having a license that was unrestricted, I could not see how we could legally restrict it. I let the lawyers go on and see if they could figure it out; but they never did, and the agreement was not entered into.

Q. Is it a fair statement to say it is your present statement that this proposed agreement was not signed because you were told by lawyers in February or March of 1933 that such an agreement was illegal?

A. Yes, sir.

Q. You testified before the TNEC, did you not, sir, on this subject matter?

A. Yes, sir.

Q. Did you state to the Temporary Economic Committee,—whatever the name of the TNEC

A. Temporary National Economic Committee.

Q. Did you tell them the reason why the agreement was not signed was because you were told by counsel that it was illegal?

A. I don't know that I did; I can't recall what I said; but what I said there, I will stand by.

Q. There was nothing said by you at that time, according to my reading of the transcript of the minutes—this is subject to correction by counsel—the reason why you did not sign the agreement was because you were told [fol. 4037] it was illegal?

Mr. Middleton: Objection. That is not impeaching the witness at all. There is nothing inconsistent.

Q. Do you want to read the testimony?

A. Anyway you want me to.

Q. Do you remember having told the TNEC that you were told it was illegal?

A. No, I don't recall.

Q. Do you not remember that in 1933 and 1934 and 1935, and right up to December, 1938, Mr. Frank C. Ball took the position he had an understanding with you that your company would not manufacture more than 100,000 gross of fruit jars each year?

A. That may have been Mr. Ball's position, sir.

Q. You know it was his position; you know as a fact that he made that claim throughout those five and one-half years?

A. I don't know what Mr. Ball's claim was. I know what he testified to that effect before the TNEC.

Q. He testified to that effect, did he not?

A. Yes, generally. You have his specific testimony.

Q. I want your recollection. My recollection is that is what he testified. He said he had an understanding with you that you were not to manufacture more than 100,000 gross thereafter.

A. I said he did not.

Q. He said he did?

[fol. 4038] A. Yes, sir.

Q. Is it not a fact, except for one year, 1935, where you went over slightly two or three thousand gross, each year, every year from 1933 to 1939, inclusive, your company manufactured less than 100,000?

A. I testified that was not the result of any restriction.

Q. We will leave that to the Court. Mr. Ball said it was an agreement or understanding, and you say it was not?

A. That is right.

Q. It is a fact you did not manufacture, except in one year——

Mr. Isseks: Your Honor, I think the best way to handle this is from the answer. The answer recites, in Paragraph 157, that in 1927, they manufactured 45,000 gross; 1928, 61,000 gross; 1929, 90,000 gross; 1930, 81,000 gross;—I do not give the odd figures—1931, 205,000 gross; 1932, 123,000 gross; 1933—the year in which the government claims the agreement was made, and as the witness said Frank Ball claimed in December, 1938, there was such an agreement or understanding, that year it went down to 89,000 gross; 1934, 78,000 gross; 1935, 103,000 gross; 1936,

66,000 gross; 1937, 95,500 gross; 1938, 44,000 gross; 1939, 57,000 gross.

Q. I will ask the witness his present recollection as to what they did in 1940 in the way of production of fruit jars?

A. I would not know that figure. I can get it for you.

[fol. 4039] Q. Was it more or less than 100,000?

A. I think it was less than 50,000. In the case of fruit jars, you have to have cheap sugar, abundant fruit, and thrift; and since 1932 we have had very little thrift. Therefore the amount of fruit jars consumed has declined annually. You have got to deal in percentages, if you want to deal in those figures.

Q. You say in 1933 this country was not thrifty?

A. Not enough to put up very much fruit. 1931 was the big year.

Q. In 1932, you did 123,000. Your negotiations in this matter started in October, 1932, as shown by the record.

A. I had nothing to do with the sale of fruit jars.

Q. Mr. Frank C. Ball, as you testified, took the position in December, 1938, he had an understanding with you in the spring of 1933 that you would not manufacture over 100,000 gross?

A. I do not deny Mr. Ball's position; and mine was that it was not so.

Mr. Isseks: Your Honor, at this time I wish to offer as the next government exhibit——

The Clerk: Government's Exhibit No. 836.

Mr. Isseks: —a memorandum dated 5/6/33, to Mr. F. Goodwin Smith, signed by Mr. A. T. Safford, Jr.; stipulated from the files of Hartford, at page 10 of the Stipulation.

[fol. 4040] The Court: It may be admitted.

Thereupon, Government's Exhibit No. 836 was read to the Court by Mr. Shields, of counsel for the government.

Q. Mr. Levis, Three Rivers was what, at that time?

A. It was a glass factory at Three Rivers, Texas.

Q. Did your company have any connection with that company?

A. Not that I know of.

Q. You did not own it or anything like that?

A. Not that I know of.

Q. It was a licensee, as far as you knew, of Hartford, was it not?

A. It was at one time; I don't know as to the date.

Q. It was a competitor of yours, was it not, in that part of the world?

A. It was a competitor of Owens-Illinois, yes.

Q. In what lines were they competing with your company?

A. I think they made milks and a general line. They may have made beverage bottles.

Q. Do you remember the conversation referred to by Mr. Safford?

A. No. I have tried to recall it, but I do not recall it.

Q. You have no recollection whatsoever?

A. No, sir.

Mr. Isseks: Your Honor, at this time I offer in evidence Government's Exhibit No. 837, a memorandum dated September 12, 1934, written by the witness, addressed to Mr. [fol. 4041] Harold Boeschenstein; copies to Mr. W. M. Robertson, and Mr. C. B. Belknap; stipulated as to genuineness by Owens-Illinois at page 24 of the Stipulation.

Q. At that time who was Mr. Boeschenstein?

A. He was vice-president and general manager of Owens-Illinois Glass Company.

Q. Who was Mr. Robertson?

A. He was in charge of the sale of food products, containers for food products.

The Court: It may be admitted.

Thereupon, Government's Exhibit 837 was read to the Court by Mr. Shields, of counsel for the government.

Q. You wrote that memorandum, did you not, sir?

A. Yes, sir.

Q. Who were Jenkin Brothers? Do you remember now?

A. I think they were people who made rubber gaskets.

Q. Did they ever get into the fruit jar business?

A. Not that I know of.

Q. Do you remember, Mr. Levis, some time in 1935, having conversations with Mr. Ball and Mr. McNash with regard to a desire on the part of one Mallinger to obtain a source of supply of fruit jars?

A. I probably did talk with Mr. Ball about Mr. Mallinger.

Q. And with Mr. McNash?

A. It might have been Mr. McNash also, yes.

[fol. 4042] Q. What was the conversation?

A. I never was disturbed about those kinds of things. Mr. Ball seemed to be always disturbed about them.

Q. Please answer my question. What was the conversation you had with Mr. Ball and with Mr. McNash?

A. I was not very much disturbed about the situation, even though they might have been always disturbed about it.

Q. I show you Government's Exhibit No. 214, which is a letter dated January 25, 1935, addressed to you by Mr. F. Goodwin Smith, in which he says:

"Mallinger is looking around for a source of supply of fruit jars and intimated to our representative that he would be glad to buy a large quantity of jars from you,"—

Owens-Illinois, that means—

"or Hazel, or Ball, if you will mark the jars 'Samco'—otherwise he is going to scour the country to see if anybody else will make the jars for him, as he has made a fair amount of profit in handling fruit jars as a jobber.

"I am just passing this on to you for what it may be worth, doubting whether you will want to consider it. On the other hand, there may be something to it if prices are maintained."

Do you remember receiving that letter?

A. I don't recall specifically, but I do not deny having received it.

[fol. 4043] Q. Who was Mr. Mallinger?

A. Mr. Mallinger was a fellow who had a glass factory in Pittsburgh,—I mean a cap factory in Pittsburgh, and sold fruit jar caps. He was a bottle jobber in addition to that.

Q. He was a price cutter, too, was he not?

A. I would not say that, sir; I don't know.

Q. Did you talk with Mr. Ball and Mr. McNash about the Mallinger situation and the desire on his part to get a quantity of fruit jars and mark them under his own trade name: "SamCo"?

A. I probably mentioned it to them, yes.

Q. Do you remember a conference in New York about it?

A. I may have.

Q. I show you Government's Exhibit No. 215. After acknowledging the receipt of the letter, you say, in the second paragraph:

"I am going to be in New York on Wednesday and Thursday and I have an appointment to talk with the other fruit jar manufacturers while there. I will sound them out on this proposition to be sure that there would be no difficulty so far as they are concerned if we were to make some deal with Mallinger. I will let you know the outcome of that discussion and any solicitation we might make of the Mallinger account."

Do you remember that, sir?

A. Yes, sir.

[fol. 4044] Q. You wrote the letter, did you not?

A. Yes, sir.

Q. Did you see these gentlemen?

A. I did not sign it; someone signed it for me; it is not my signature.

Q. You dictated it?

A. I remember the letter, yes.

Q. Did you subsequently have that conversation?

A. Yes. We met every month during the NRA in connection with fruit jar statistics.

Q. Did you meet with those gentlemen about Mallinger?

A. Yes, as I said in the letter, up to all the fruit jar interests at the time of the meeting, as to what they wanted to do about it.

Q. What did they say?

A. I don't recall.

Q. I show you Government's Exhibit No. 216, dated February 5, 1935, from you to Mr. F. Goodwin Smith. You say in the second paragraph, after reciting the fact that you talked to Mr. Ball and to Mr. McClure—by the way, who was Mr. McClure?

A. The vice-president and general manager of the Hazel-Atlas Glass Company.

Q. "They all feel that it would be silly for any of us to set Mallinger up in the fruit jar game and permit him to cut our prices with jars of our manufacture, and they left [fol. 4045] our meeting with the understanding that some of them intended to get in touch with you about the situation so that you would be taking steps to see that other licensees

who do not have a fruit jar license would in no way be tempted by this business."

You wrote that, did you not, sir?

A. Yes, sir.

Mr. Middleton: Just a moment, please. May we have the record show, if you did not, the date of that letter, which is February 5, 1935, at which time the NRA was in full force and effect; and that they were operating under the NRA Code.

Q. Did the NRA Code permit you to decide whether or not you were going to sell fruit jars to a price cutter?

Mr. Middleton: Objection to that question.

The Court: Overruled. He may answer.

A. The NRA Code, as I recall it, had two over-all theories. One was that the Code Authority would grant a quota; and in order that the—well—the 10 per cent of the industry, who were price cutters,—that is the way it was stated by the president—would not demoralize the other 90 per cent of the industry. Anyone who made more than his quota would be guilty of violating the Code. It also had a theory of a certificate of convenience and necessity to get into the industry. Those being in there, we talked about them quite freely, and about things that might result from [fol. 4046] our conducting our business upon that theory. That was the theory — which we understood we were permitted to do business; and when that theory was discontinued because of a decision of the Court, it was announced that we had gone back to the horse and buggy days.

Q. Did you feel that the NRA Code permitted you to get together with your two competitors, Ball Brothers and Hazel-Atlas, and decide that somebody from the group should get in touch with Hartford-Empire about the situation so that Hartford-Empire "would be taking steps to see that other licensees who do not have a fruit jar license would in no way be tempted by this business,"—for instance, Mallinger.

A. We believed that the NRA Code gave us permission to talk about things of that kind; and that is what I think we did.

Q. Did you hear from Mr. F. Goodwin Smith thereafter?

A. I may have; I do not deny it; I do not remember it.

Q. Did F. Goodwin Smith tell you they would see to it that licensees who did not have a fruit jar license would not be tempted by the business?

A. Not that I could recall; but if you could refresh my recollection——

Q. I now show you Government's Exhibit No. 225, which is a memorandum dated July 20, 1937, writte- to Mr. F. Goodwin Smith, by Mr. Safford, referring to a conversation with you, in which he says: "Just as a matter of record"— [fol. 4047] this is two years after the NRA was declared unconstituional—

"He said that they were short of fruit jar capacity. The particular order which he wanted to fill had been turned down by Hazel-Atlas and had also been turned down by Ball. His suggestion was that they authorize General with our permission, to make 5,000 gross of fruit jars. He said that he hadn't called Ball on it inasmuch as Ball would have told him to put something else over at General and to take the order himself.

"He said hat in the absence of C. B."—

that is Mr. Belknap?

A. Yes, sir.

Q. "that Jim Naylor was handling the matter and that we should get in touch with Jim as he, Levis, would be unavailable for the balance of the week."

Did you have the conversation referred to therein by Mr. A. T. Safford?

A. I may have. I don't recall it specifically. I do not deny it.

Q. The record is clear it was after the NRA?

A. It is clear, yes; but in a period when we had a great over-demand for our products. The only way we could take care of a customer was to have someone make that or some other order for us.

[fol. 4048] Q. You decided to place it?

A. Not necessarily. We had a right to place an order for beer bottles with some other manufacturers.

Q. What would Hartford have to do with it in 1937?

A. They would have to have given a license to General in 1937.

Q. You had to get in touch with Hartford?

A. I asked Hartford whether or not, because of our oversold condition, they would permit General to have a license to manufacture for us 5,000 gross of fruit jars.

Q. Hazel-Atlas had to agree, and Hartford had to agree?

A. I don't know whether they had to agree or not. That was Mr. F. Goodwin Smith's business, not mine.

Q. He said you said the particular order you wanted filled had been turned down by Hazel-Atlas and also by Ball Brothers?

A. That is right.

Q. Did you get in touch with Hazel-Atlas and Ball Brothers and ask them whether they would agree to have General take the license?

A. May I look at the memorandum?

Q. Yes.

A. The memorandum says clearly that I did not.

Q. You don't know whether they did or not, do you?

A. That is Hartford's business, not mine.

Q. You were communicating with Hartford?

[fol. 4049] A. I officially asked them to grant a license to take care of a customer whom I was not in a position to supply.

Q. Some time in 1929, shortly after you became connected with Owens-Illinois, there were discussions, were there not, about the Knox-O'Neill Suction Machine, the so-called vacuum type machine?

A. Yes, sir.

Q. You had various discussions about that subject matter, did you not, with the Hartford people?

A. I was present. I was not the only one in on the discussions. There were numerous conferences regarding it.

Q. Whom did you talk to at Hartford about it?

A. Mr. F. Goodwin Smith, Colonel Brown, and W. J. Belknap.

Q. Anybody else?

A. Mr. Carter and Mr. Williams were in conferences with me. Mr. Falck was there one time, I remember specifically.

Q. What about Mr. Herbert Knox Smith?

A. I don't recall him.

Mr. Middleton: May I inquire what year?

Mr. Isseks: 1929.

Q. I now show you Government's Exhibit No. 253, dated July 30, 1929, and which is a summary of the Knox-O'Neill considerations which Mr. Herbert Knox Smith sent to his associate, Mr. F. Goodwin Smith, somewhere in Europe, on [fol. 4050] the same day, I think. I think beginning on page 3, at the bottom of the page, there is a reference to a conversation with you. I want to direct your attention to it. He says, at the bottom of page 3:

"(11) There is included in the memorandum the brief statement of a very interesting radical suggestion by Mr. Levis, made after he had read the plan which we submitted to him July 25th. He stated that he felt, offhand, favorably inclined toward the plan, but that he favored it more because of what it promised for the future relations of Hartford and Owens than because of the merits of this particular O'Neill matter. He said that it was his ideal that Hartford and Owens should enter into much closer relations; Hartford should be the sole controller and licensor of all patents, both gob feed and suction, or any other form developed by the two companies; should be the sole developing company; and that Owens should confine itself solely to manufacture. He also wanted to have Owens have preferential rates under all the combined group of inventions, and a share in all the income therefrom.

"I replied that I approved of his theory of making Hartford the sole development and licensing company and Owens purely manufacturing, but that as to the next step, I was [fol. 4051] not able at present to commit myself in any way."

Do you remember having that conversation with Mr. Herbert Knox Smith?

A. No, sir. I have read this before I came on the witness stand, it being one of the exhibits; and I think it has something to do with my not having specifically recalled Mr. Smith individually. This does not differ at all from the theories I had at that time. I felt that we should not have anything to do with this licensing business; that we should be solely in the manufacturing business; and that we ought to get out of it, so that it would not take time in the conduct of our business.

Q. Do you deny you had the conversation set forth by Mr. Herbert Knox Smith?

A. No, sir.

Q. I now hand you Government's Exhibit No. 255, which is a part of the larger memorandum, at page 14, Section 71, where Mr. Knox Smith spells out the conversation in a little greater detail:

"When we showed Mr. William Levis our report of July 25, 1929, and he had read it, he discussed it briefly and then said that his ideal for the future was a situation where

(a) Hartford would control entirely the licensing under both Owens and Hartford's patents, suction, gob feed, and any other form.

[fol. 4052] (b) That Owens should confine itself to a manufacturing business.

(c) That Owens should have the right to use, at preferential rates, all of these developments.

(d) That Owens should share in all of the income therefrom.

He said that he was now interested in the O'Neill matter, not because of its own merits, but because it tended toward the above ideal, which he called the 'second step'.

I replied—

(a) That on the point of having Owens become a manufacturer only, and H-E the general development and licensing company, I agreed.

(b) That of course any such preferential rates to Owens, and share in our income, was another matter of very different sort, requiring much consideration, weighing of values, and bargaining.

(c) That I wanted it clearly understood that if I urged Owens to go into the O'Neill deal, I did not in any way thereby commit Hartford or myself to his 'second step'. That this second step, of course, could not even be considered in the short time available on the O'Neill matter.

[fol. 4053] "This suggestion is, of course, interesting. It has a bearing on the O'Neill matter, tho not an immediate factor therein. Mr. Levis wants a much closer alliance between the two companies, and said so plainly."

Do you remember that conversation he refers to?

A. I don't remember the conversation; I remember the subject matter clearly. It did not differ at all from my idea

of saddling off that detail of the business on anybody who would take it.

Q. You were interested in participating in any income?

A. Oh, yes.

[fol. 4054] Mr. Isseks: Now, at this time, Your Honor, I offer as the next Government's Exhibit, a memorandum dated December 11, 1929, written to the witness by Henry W. Carter, stipulated as genuine by Owens-Illinois at page 16. Government's Exhibit 838.

The Court: It may be admitted.

(Government's Exhibit 838 read by Mr. Apsey.)

Q. Did you receive that memorandum, sir?

A. I undoubtedly did.

Mr. Isseks: Now, at this time I offer as Government's Exhibit 839, a memorandum dated March 26, 1931, addressed to H. W. Carter, a copy to Boeschenstein, Barnard & Phillipps, written by the witness, stipulated as genuine by Owens-Illinois at page 19 of the stipulation.

The Court: It may be admitted.

(Government's Exhibit 839 read by Mr. Shields.)

Q. You wrote that, did you not?

A. I don't deny it. I don't remember it.

Q. Look at the start of it. Do you recognize the handwriting there?

A. Mr. Carter's. It says:

"Talked with Boeschenstein about this today. Write F. G. Smith about the distribution of I. S. machines, royalties, etc. W. E. L. 3/27/31."

Q. Is that right?

A. Yes. There is not anything unusual in that.

Q. I am not making any point of its being unusual. You were interested at that time in getting a preferential posi-

[fol. 4055] tion, were you not, in connection with the I. S. machines?

A. The memorandum indicates it.

Q. Did you ever get it?

A. Not that I know of.

Q. Did you ever ask for it?

A. I don't think so.

Q. You say you didn't ask for it?

A. I say I don't think we did.

Q. In any event, you didn't get it?

A. In any event I don't think that we got it. We don't have it now.

Mr. Isseks: In this connection I would like to have marked as Government's Exhibit 840, memorandum dated June 4, 1931, addressed to the witness, by Henry W. Carter, stipulated as genuine by Owens-Illinois at page 19 of the stipulation.

The Court: It may be admitted.

(Government's Exhibit 840 read by Mr. Shields.)

Q. You received that, Mr. Levis?

A. I undoubtedly did. I think I testified at the TNEC I had never read any of these, and Mr. Carter put these on my desk just like handbills. The depression had started; I was trying to run the business; Mr. Phillipps, Mr. Belknap and Mr. Carter knew all about those, and I left it pretty much to them.

Q. Would you say you didn't read any memorandum of Mr. Carter's?

A. No, sir. There were a number of them I didn't read. [fol. 4056] I don't recall this memorandum, and I don't recall the long memorandum which you read.

Q. You were familiar in a general way with the forming machine situation in 1931, were you not?

A. I was familiar, yes, sir.

Q. You knew at that time, did you not, that there was the Lynch Corp. manufacturing and selling outright, forming machines for narrow-neck bottles?

A. Sure; the Illinois Company had bought some of them.

Q. You knew the Ed Miller Company was manufacturing and selling outright, pressed and blown ware machines?

A. Yes, sir.

Q. You knew that Hartford was licensing the I. S. machine, charging a license fee and a royalty rate, and also had certain pressed and blown machines which they were licensing and charging a license fee and royalty rate for?

A. They had a narrow-neck machine.

Q. I understand they had the I. S.

A. No. They had another narrow-neck machine.

Q. They were licensing everything and collecting royalty?

A. They were licensing feeders and lehrs, not everything.

Q. I mean forming machines.

A. Yes.

Q. And you, in 1931, were participating in all the license fees and royalties to the extent of one-half over and above $600,000?

A. No, not everything. We were only participating in the licensing fee received on feeders and forming machines. [fol. 4057] Q. That is what I said. I didn't say anything else.

A. You said "everything".

Q. I am sorry if I did. I meant forming machines. They were licensed and leased by Hartford, in addition to feeders, and you participated, that is right?

A. (No response.)

Q. You were interested, certainly, in bringing about a situation where there would be reasonably effective control by Hartford of the forming machine matter, weren't you?

A. I was particularly interested that the forming machine matter didn't get into the same controversy the feeder matter got into, insofar as litigation was concerned.

Q. Was your company in interference, as far as you know, with anybody on forming machines?

A. At that time?

Q. At that time.

A. Yes, with Knox-O'Neill; we had a suit against the O'Neill Machine Company for infringement of the Soubier patent, I recall.

Q. Was it in interference with Lynch or Headley and Thompson, or Miller?

A. Well, we had a half interest in Headley & Thompson, with an option to buy.

Q. You weren't in interference; you discontinued the interference after you had the option, in '25?

A. We weren't in interference with them but we were in interference. The Soubier patent covered an invention [fol. 4058] that overlie the Knox-O'Neill transfer.

Q. But not with Lynch?

A. Not so far as I know.

Q. Nor with Headley & Thompson?—I am repeating, but I want to make it clear.

A. With Headley & Thompson we had an interest in it. I don't presume we would have been in interference. The patent hadn't been issued out at that time, anyway.

Q. You weren't in interference at that time with Ed Miller, were you?

A. No, sir.

Q. Now, you mentioned the interference with O'Neill. I show you Government's Exhibit 262, a letter from Mr. Carter to Mr. F. Goodwin Smith, and I direct your attention to the fact that the letter says—dated November 7, 1931—in the beginning:

"Mr. Levis has told me of your talk in New York last week. He informs me Mr. Harry Collin has been given an option on the O'Neill patents and properties, under which Collin will attempt to negotiate their sale."

At that time was your company interested in the acquisition of the O'Neill business, in December, 1931?

A. No, sir.

Q. Mr. Collin obtained the option for his own benefit?

A. He obtained the option and offered to sell the business for Mr. O'Neill, who probably wanted to sell it. When we bought the business from Mr. O'Neill, Mr. Collin's [fol. 4059] option had to be cancelled before Mr. O'Neill would deal with us.

Q. At that time Mr. Collin paid off the option?

A. I don't know. You will have to ask Mr. Collin.

Q. Mr. Carter says you informed him Collin had been given an option.

A. I don't recall, sir. I don't deny it.

Q. Now, after the July 1, 1932, contracts had been made, in the latter part of July do you remember the subject-matter being discussed as to whether or not Hazel-Atlas should pay one-third of this option price that was being paid by your company and Hartford over a number of years?

A. Yes, sir.

Q. Did you have any conversation with anybody?

A. I might have, although that was a matter I relied entirely on Mr. Carter, Mr. Phillipps and Mr. Belknap, who had handled it earlier, to handle.

Q. I show you Government's Exhibit 308, memorandum addressed by Mr. Phillipps to Mr. Carter, dated August 6,

1932; see if I can refresh your recollection. I think you will want to read the first page, but I want to direct your attention to the first full paragraph on the second page, which reads:

"We understand that during his recent negotiations with Mr. McNash, Mr. Levis called attention to this Whitall-Tatum agreement and suggested that the Hazel-Atlas Company might wish to take a third participation in the option, and assume one-third of its cost. We under-[fol. 4060] stand that Mr. McNash expressed himself tentatively as favoring this proposition, but the matter is still open and the question is how it can best be brought to a definite close."

Do you remember that?

A. Yes, sir, I remember the discussion.

Q. Will you look at the front of the exhibit? There is a note which Mr. Carter identified in the handwriting of Mr. Phillipps, which says:

"H. W. C. Mr. Levis agrees that we should not go onto the non-exclusive basis while negotiations are progressing with Miller users. He says that Mr. McNash is familiar in a general way with the deal and agrees to pay one-third of the expense. He suggests that Hartford bill Hazel one-third from July 1st, but that no formal contract be expressed at present unless Hazel opens the subject."

Does that conform to your recollection?

A. Yes, sir; I always complained about how much we had to pay for this thing, and I think this is between Carter and Phillipps trying to humor me.

Q. Did you ever get Mr. McNash to pay the one-third?

A. I don't know; it is a matter of record.

Q. What is your best recollection?

A. He didn't pay it to me.

Q. Do you know whether he paid Hartford?

A. No, sir. The Hartford people may know.

[fol. 4061] Q. I show you Government's Exhibit 664, dated August 12, 1932, which says, Mr. Carter writing to Mr. F. Goodwin Smith,—in the second paragraph:

"Mr. Levis has expressed himself as entirely in accord with your position not to raise the question of going to a

non-exclusive basis until your negotiations with the Miller users come to a head. He seems to think that Mr. McNash understands the situation well enough to warrant your billing Hazel on the basis of their assuming a third participation in the cost of this option as from July 1st."

Do you know whether or not they ever billed him?

A. No, sir.

Q. You do recall, do you not, finally your company made a contract with the O'Neill Company by which you acquired the option to purchase the O'Neill assets for $600,000? I refer to Government's Exhibit 263, dated April some date, 1933——

A. I think I can give it to you.

Q. The first option—I don't mean the final one—dated March 6, 1933, the first option?

A. Yes, sir.

Q. That was an option to acquire all the assets of all kinds for $600,000?

A. Yes, sir.

Q. And that is signed by you, but I believe not by anybody else, it is just a one-way street. Then on April 4, [fol. 4062] 1933, according to this piece of paper, which is part of Government's Exhibit 263, you exercised the option within the required period, to pay the $600,000, did you not?

A. That is my recollection, yes, sir.

Q. That is what it says on this piece of paper signed by you. Nevertheless on May 6th there was a new form of agreement by which you agreed to acquire it for $500,000 without certain feeder patents and applications?

A. Yes, sir.

Q. Then on the day before—I cannot tell what day, it was done about the same time,—O'Neill sold to Hartford for $100,000 or at Hartford's option for a certain annuity equal to that, the feeder rights; is that right, sir?

A. Generally, yes, sir.

Q. What were the circumstances that resulted in your changing an arrangement by which you were going to acquire all these assets for $600,000 at that time, the option ending April 4, 1933, to pay $600,000, to where you were changing the papers to buy the assets, other than the feeder assets, for $500,000 and have Hartford take the balance for $100,000 or its equivalent?

A. Generally speaking, Mr. Hazelton, who was a very close friend of Mr. O'Neill's and his son,—as I also was,—handled this negotiation, and he apparently worked the option up to that point, and in consideration of the subject-matter I decided, probably with the approval of Mr. Phillipps and Mr. C. B. Belknap, that we would not get anything out of the feeder and feeder forming machine [fol. 4063] situation anyway, and therefore we didn't want to buy it. If we got it it flowed under our contract to Hartford. We had a very important suction development going on at that time, and Mr. O'Neill's suction invention, the patent covering those inventions, read directly upon our development, and all we were agreeing to do was to settle this lawsuit that was then pending in the Federal Court here in Toledo and to acquire the stationary pot rights, because we thought they were extremely valuable to us. As to the dates of the two different agreements,—one preceding the other,—my recollection is that for Mr. O'Neill's own tax reasons, those agreements were drawn on those dates by his counsel, and they were of no—we had no objection to accommodating him in this respect. So that accounts for the difference in dates.

[fol. 4064] Q. Is it also a fact that Hartford contributed towards the purchase?

A. I don't know if there was any contribution towards purchase involved.

Q. The option called for $600,000 and you exercised the option?

A. If we found one part of it we did not want and would not think it was any good and Mr. O'Neill would not sell us the business unless we took it all, therefore we probably took it up with Hartford that we were going to try to buy this and we would like them to buy the feeder part of it. They probably agreed to do it.

Q. Did you take it up with them before you made the original option in March, or afterwards?

A. I don't recall. Mr. Hazelton would be the one who did it. He handled the negotiation.

Q. Wasn't there some conversation which you had with the Hartford people at which it was suggested that Hartford make some indirect contribution to the acquisition?

A. It may have been, sir. It was a long talk. The net result was Hartford bought the feeder rights. We bought

the rest of it. They paid $100,000 and we paid a half million. There was a lot of talk and correspondence in connection with it.

Q. That was the first step in taking care of the forming machine?

[fol. 4065] A. No.

Q. Acquiring the O'Neill—you taking the suction rights and Hartford taking the feeder rights?

A. Oh, no. I think the first step was that which I testified to the other day when we entered into the '32 agreement. We got the development of Hartford on suction so we would have immunity from any difficulties in going ahead with our suction development. We again got that from Hazel, and at that time we had it from Ball. We were developing this forming machine picture all around. As I stated the other day, I felt a patent was something that did not give us the right to do a thing but prevented other people from doing it. Therefore we wanted to get immunity so far as we could, and we were not eager about going through the same contortuous problem in forming machines we had gone through in feeders.

Q. The forming machines you are talking about related to suction type?

A. Forming machines.

Q. You were interested in bringing around control of suction type forming machines?

A. Bring around control?

Q. That is right?

A. No.

Q. What about Hartford's forming machine development?

A. It was their right under our contract. Insofar as our [fol. 4066] developments interfered with their development, if we would put a new gadget on any feeder forming machine or suction machine they could put it on their machines without interference by us.

Q. Were you interested in bringing about control in Hartford's or Owens' future forming machines used in connection with feeder devices?

A. I may have been generally. Not specifically.

Q. On May 6th, the exact date apparently when the O'Neill deal was consummated according to the second option for a half million dollars, Mr. Brown writes Mr. F. Goodwin Smith a memorandum dated May 6th, 1933, Gov-

ernment's Exhibit 278, in which Mr. Brown says, "C. B. Belknap tells me this morning that he talked with Levis about sharing the cost of purchasing the Headley & Thompson applications". The Headley & Thompson applications were on forming machines connected with feeding devices and not connected with suction devices?

A. That is the way I understand it.

Q. Forming machine connected with feeding device?

A. If they had a bolt on there a knock-out arm which was patented and we put it on a suction machine we could be sued for infringement.

Q. Was it a forming machine in connection with a feeder device or suction device?

A. It was a forming machine in connection with either—so far as the patents are concerned.

Q. I am talking about practical use?

[fol. 4067] A. We had a few on our suction machines.

Q. "Mr. Levis is willing to share this expense with us provided the purchase constitutes a part of the general scheme which Mr. Levis has been discussing with Mr. F. Goodwin Smith".

A. Exactly the same as I testified to just a few minutes ago.

Q. Please tell us. I am sorry, I don't remember in detail.

A. The general scheme was not to have to go through the contortions of the whole patent situation on forming machines that we have been through on feeders. To give Owens-Illinois Glass Company a right to the developments of others so in the practicing of their developments on suction or anything else they would not run into these whole patent interferences.

Q. And he says, "I am not entirely clear whether this means merely the forming machine pool or includes the matter of unit royalty". And you still say it is the thing you just testified to?

A. Sir?

Q. Mr. Brown says to Mr. Smith, "I am not entirely clear whether this means merely the forming machine pool or includes the matter of unit royalty"?

A. Mr. Brown in his own memorandum was not entirely clear, and I don't know whether I was.

Q. You were not clear in your own mind?

A. No. I was generally trying to do just what I testi-
[fol. 4068] fied to.

Q. Isn't it a fact you were interested in bringing about a forming machine pool?

A. No. I was interested in having a suction machine which would be the best development in the country, and I certainly would not want a pool in competition to it.

Q. In other words, you contradict flatly what Mr. Brown says?

A. Yes, unless you can change my recollection.

Q. Oh, I will. I will give you every opportunity. You also contradict Mr. Brown flatly when he says it includes a matter of unit royalty?

A. No. I was always a proponent of unit royalty.

Q. The only place you contradict him when you say it was not a forming machine pool?

A. I don't know why I wanted a forming machine pool.

Q. You wanted to collect royalties?

A. At this time it is getting close to the '35 date.

Mr. Middleton: I object to the construction placed by Mr. Isseks on the wording of Mr. Brown.

Q. You say you were not interested at this time of sharing one-third of the royalties collected by Hartford?

A. I was always interested in that.

Q. If you could bring about a forming machine pool wouldn't you collect more royalties out of that fund?

A. No.

[fol. 4069] Q. Then he says in the memorandum, "If Owens joins in purchasing Headley & Thompson, they want to avoid contributing directly to the purchase, but prefer to arrange it somehow as we are arranging our contribution to the O'Neill purchase". Did you have that in mind?

A. No. That is what Mr. Belknap had in his mind.

Q. "C. B.'s suggestion is that they pay their half of the purchase price for whatever suction rights there may be in Headley & Thompson, or if this does not look plausible enough because there are no Headley & Thompson suction rights, then he suggests that Owens buy something or other in the way of suction from us". Isn't he stating both your views there?

A. No.

Q. Mr. Belknap was on his own, was he?

A. I don't know. Mr. Belknap was handling the situation. I was interested in the unit plan and I still am, and I was interested in keeping out of the same kind of controversy in the forming machine invention and patent structures that we apparently kept out of as a result of my efforts.

Q. You were not interested in the forming machine pool, is that your answer?

A. No. I said if you can refresh my recollection as to something which indicated it I would be happy to have you refresh my recollection on it, and my present recol-
[fol. 4070] lection is I don't see in the past expansion of suction machines and our development in suction that we would ever have been interested in a pool.

Q. "This will undoubtedly require a conference involving Mr. Levis and the Belknaps before we can make any definite contract with Whitall-Tatum or with Lynch"?

A. I would feel it would if we would not have to talk about it again.

Q. Did you do anything about trying to bring about a forming machine pool?

A. Not as such, sir.

Q. Let's find out, sir. Ed. Miller Company is a manufacturer primarily of forming machines used in connection with feeder fed machines, is that right?

A. Oh, he made presses and a number of gadgets.

Q. Did he make them for suction machines?

A. No. He might have made some parts for us.

Q. But he did not make machines as such for suction, did he?

A. No.

Q. He made them for feeder devices, didn't he?

A. Yes.

Q. A company down here at Columbus, Ohio?

A. Yes.

Q. Do you remember your getting in touch with Goodwin Smith about having Mr. Goodwin Smith send representatives down to Columbus to open negotiations for Hartford acquiring the properties of Ed Miller?

[fol. 4071] A. What date, sir?

Q. Shortly after that date I just gave you,—specifically, June 12, 1933. I will hand you a telegram which you sent. See if that refreshes your recollection, Government's Ex-

hibit 310, dated June 12, 1933, sent to you by Mr. F. Goodwin Smith?

A. That was after I had been talking with Miller and gotten up to the stage where we wanted them to say whether they wanted to buy it. I talked long before that.

Q. My question is whether you sent that telegram?

A. I did.

Q. The telegram reads as follows:

(Mr. Isseks reads Exhibit 310.)

Mr. Collin was one of your directors, was he not?

A. Mr. Collin is one of our directors and was at that time.

Q. What was your interest, the Owens Company's interest in whether or not Hartford acquired feeder forming machines in use of feeder fed devices?

A. The same reason I stated to keep the forming machine out of the patent interference the feeders got in, and in order that we might not be impeded in the development of our suction machine.

Q. You had an option at that time to buy the Headley & Thompson applications. Wasn't that one of the reasons, sir?

[fol. 4072] A. No. Headley & Thompson applications did not provide for the wide mouth machine and Miller did not make any narrow neck machine.

Q. What was your interest?

A. The interest I just testified.

Q. Isn't it a fact your interest was as Mr. Brown said, to bring about a forming machine pool?

A. No.

Mr. Middleton: I object to that again, Your Honor, for Mr. Brown did not say that manifestly. It has been misread every time.

The Court: What does he say?

Mr. Isseks: He says, "I am not entirely clear whether this means merely the forming machine pool or includes the matter of unit royalty".

Q. I will put it that way. Wasn't it for that purpose, for merely the forming machine pool, or the matter of unit royalty, was it one or the other?

Mr. Middleton: That is a document which speaks for itself.

The Court: The witness may answer.

A. I think the memorandum speaks for itself. I testified on it. I repeatedly stated unless you can refresh my recollection I never had any desire to have a forming machine pool and can't see why it would have been in the best interest of the future of our suction development to have had such a desire.

Q. What was your interest as an executive head of the company; how much of your production was on suction in [fol. 4073] 1933?

A. 87½ per cent.

Q. And 12½ per cent was on feeder?

A. About.

Q. Do you remember you were collecting one-third of the royalties over and above $850,000 on feeder fed devices and forming devices used in connection with feeder fed devices?

A. Yes, but there was practically no forming machine royalties. The I. S. was the only machine Hartford charged royalty on. They never charged any on Lynch or Miller.

Q. They could not up to the time of the Lynch or Miller contract; if they didn't have a contract they didn't have to pay royalty?

A. I am not talking about Hartford charging.

Q. Hartford charged a royalty to use Lynch forming machine if the Lynch forming machine patent were used in connection with the feeder?

A. You will have to qualify that.

Q. You tell me your understanding?

A. Whatever the contract is, I could not tell you specifically, I will be glad to put the contract into the record and say that is my understanding of it.

Q. Isn't it a fact that after Lynch signed up with Hartford in August of 1933 that any purchaser of a Lynch machine had to sign a piece of paper, sign a license agreement with Hartford by which he agreed to pay Hartford [fol. 4074] regular royalty rates on feeders if he did not use a Hartford feeder with that Lynch forming machine?

Mr. Wall: You mean pay royalty on the former?

Q. Yes, same rates as a feeder?

A. I understood that document you read yesterday to Mr. Rieman, that about covers the policy on that.

Q. Do you dispute what I say about it?

A. No.

Q. At any event you sent the telegram and told somebody down at Columbus to open the negotiations?

A. Yes.

Q. What happened after that? I think you said before this you had conference with somebody, I think you said Miller, did you?

A. I knew Mr. Miller.

Q. I think you volunteered the statement about that date? (Handing telegram to witness.)

A. I would say almost 1932. Mr. Miller told me he wanted to retire and sell out his business and I talked to him about it.

Q. What did you say, sir?

The Court: We will suspend at that point. The bailiff may recess court for ten minutes.

(Recess ten minutes.)

Q. At this time, sir, I show you Government's Exhibit 311 and direct your attention to the next to the last paragraph. You will note Mr. Belknap writing to Mr. F. Good- [fol. 4075] win Smith on June 20, 1933, says:

"With reference to the patent situation on the Miller machine at Columbus, I understood that it was set up so that when your representatives went down to Columbus they were going to look into the whole situation including the patent. I have been having Mr. Hoge dig out any of the Miller patents which we have copies of, but in view of your talk with Mr. Levis I have arranged to have Mr. Hoge go to Columbus tonight and spend tomorrow and possibly Thursday going into this matter."

Did you have a talk with Mr. F. Goodwin Smith after sending somebody down to Columbus?

A. I don't recall it but I don't deny that I did, sir.

(Question and answer read.)

Q. Now, I show you Government's Exhibit 165, which deals generally with the conversation which Mr. Goodwin Smith said he had with you and Mr. McNash. I direct your attention to the bottom of page 2, where it is stated,

"Levis then made quite a dissertation on the unit plan which he thought could legitimately follow the acquisition of the Whitall-Tatum patents as well as some understanding with Lynch on the Miller Machine & Mold Works, and made four suggestions, as per the enclosed memorandum. McNash agreed to these suggestions."

Attached to the exhibit are the suggestions which he says [fol. 4076] you made. Do you remember talking about the unit plan to Mr. McNash or to Mr. Goodwin Smith, the day before June 30, 1933?

A. I don't remember at this particular time. I don't deny it was then. This memorandum, I would like to read it again, but it generally outlined, as I read it last night, the thoughts that I had.

Q. The question is whether the unit plan suggested in the memorandum attached, which Mr. Smith said is your plan, is your plan?

A. That is not a plan in the memorandum attached. The memorandum attached says if the unit plan which was the policy of offering Hartford licensees a feeder, former, transfer device and fireless lehr at substantially present Hartford-Empire feeder royalties, could be worked out. There was a good deal of detail to that. Then Mr. McNash would be willing to go ahead and make these adjustments as they worked out, because Mr. McNash felt as I did, that Hartford had a bad policy, when they had a feeder royalty or machine royalty for one machine and no machine royalty for another, and then you made a charge for a stacker, a lehr, and a number of other things. We thought the way to satisfy the Hartford licensees and as an inducement to cause others to want to come in and take Hartford licenses, was to have a practical business proposition; not something that when they got in they charged them for using sugar in their coffee. They should have served them with a table d'hote meal, so to speak, and they could [fol. 4077] take what they wanted.

Q. Mr. Smith says:

"Levis then made quite a dissertation on the unit plan and then made four suggestions as per the enclosed memorandum."

You have just read the enclosed memorandum. Is that the memorandum you gave F. Goodwin Smith?

A. No. The four suggestions I made were interpreted in Mr. Goodwin Smith's words to try to sell the idea to Falck.

Q. He says here you said:

"(1) H. A. to pay H. E. standard royalties on all H. A. production from August 1, 1933, to February 1, 1934, this payment to be without prejudice to any rights that either H. A. or H. E. have under present contracts between them.

(2) H. E., during this period from August 1, 1933, to February 1, 1934, is to try and work out a unit plan policy of offering their licensees a feeder, former, transfer device and fireless lehr at substantially present H. E. feeder royalties.

(3) H. E. will attempt to include in the unit plan a purchase of Headley-Thompson forming machine applications, and either a purchase or license arrangement with Ed. Miller and Lynch Machinery whereby the forming machines of Miller and Lynch are available only to H. E. licensees."

[fol. 4078] Was that talked about at the time?

A. Yes.

Q. What happened in regard to the suggestion you made in Government's Exhibit 310?

A. I presume from Mr. Belknap's letter to Mr. Goodwin Smith I subsequently talked with Mr. Goodwin Smith about it and Mr. Hoge from our company went down and looked into the situation rather than the Hartford people. That is what the letter indicates.

Q. Did the Hartford people stop negotiating with the Miller people?

A. I don't know, sir.

Q. Did your people negotiate with them?

A. No.

Q. Do you know what happened; did anybody negotiate with them?

A. Yes. The Lynch Corporation bought them.

Q. Who brought that about?

A. Mr. Collin had an option on it and it goes into the whole subject of Lynch, on which there is a great deal of correspondence.

Q. I show you Government's Exhibit 316, which is a telegram from Hartford-Empire Company to E. C. Bridges, Lynch Corporation, Anderson, Indiana, which says:

"Our Mr. Eldred and Mr. Brown will be in Pittsburgh at William Penn Saturday the eighth and would like to meet you there to discuss license matter. Please advise [fol. 4079] us by wire today as to whether you can be in Pittsburgh Saturday for this purpose. We urge that Mr. Werbe be present."

Were you informed of that fact, sir?

A. I might have been. I don't deny it.

Q. I show you Government's Exhibit 317, a telegram of July 4, 1933, to Mr. Werbe from Mr. Bridges:

"Retel meeting arranged with Eldred and Brown at William Penn Hotel Pittsburgh Saturday the eighth Stop Uz and perhaps Collins"—Uz,

who is he?

A. Mr. McMurtrie.

Q. And Mr. Collins, that means Harry Collin.

"Uz and perhaps Collins will be with me. Come if you think advisable but think we can listen to Hartford's proposal and if acceptable or chance for dealing, will arrange future meeting with you. Will wire you results. Also notify Levis."

Did you hear from Mr. Werbe in that connection?

A. No. I did not hear from him. He was out west and did not want to be disturbed.

Q. Did you have a conference with Mr. Lynch?

A. Several.

Q. What is your present recollection of what the conferences were, who you had them with and what took place?

A. I would say in about 1929 Mr. Lynch sold his interest in the Lynch Corporation to some interests, I don't know [fol. 4080] who they were, who issued a public issue of Lynch Corporation shares. That came about by the fact Mr. Werbe wanted to expand the business and Mr. Lynch did not desire to do that. About 1930, feeling that that was a very well run company, I suggested to Mr. Werbe that if at any time he desired to make some investment and did not have the cash, that I thought our Illinois Glass Com-

pany would be interested in making an investment in his company. Nothing happened after that and I was informed by Mr. Miller that he had given Mr. Collin an option on his business with the idea of his selling out, and Mr. Collin knew Mr. McMurtrie in Indianapolis and talked with him about that option. Mr. McMurtrie knew Mr. Werbe and contacted him about the matter and Mr. Werbe was interested if he could get the cash. We were then pretty much at the bottom of the depression, and he called me on the telephone and asked whether the statement I had made sometime ago I was still interested in. I told him I thought I would be and I understand from that time on he conducted his negotiations for the acquisition of the Miller Mold & Machine Company and subsequently purchased it. In connection with that purchase the option apparently was for $450,000 and he was only raising the $200,000 by his financing and I suggested that the Owens-Illinois Glass Company had always wanted to have rights to any suction—any development that he might have to apply to their suction and maybe I could cause them to purchase those rights, and I [fol. 4081] suggested that Hartford were always interested in all of the remaining feeder patents that either he or Miller might have and maybe I could talk with them and they would be willing to purchase from him after he had acquired the Miller assets, its rights. The prices finally worked out after a great deal of negotiation were, $125,000 from Owens and $125,000 from Hartford and $200,000 from the financing. As soon as that was worked out, Mr. Werbe issued a circular as a listed company on the Chicago Stock Exchange; the first Securities and Exchange Act, the name of which I don't recall, had then been passed, and throughout this negotiation I conferred with counsel for Owens as to the propriety of my interesting myself in it personally. I offered it to Owens, who were not interested in it, and a full disclosure of all of the facts was made in these circulars which were mailed to all of the shareholders of Lynch and sent to every brokerage office in the country.

Q. Am I correct, $125,000 of the $450,000 was furnished by Hartford?

A. Yes.

Q. And $125,000 of the $450,000 was furnished by Owens?

A. Yes.

Q. And the other $200,000 was furnished by you directly or indirectly?

A. Directly or not directly.

Q. Where did you get the $200,000,—who furnished it?

[fol. 4082] A. The circular stated Mr. Collin and myself did, but Mr. Collin, as I recall, furnished half of it—no, 40 per cent, and I furnished 60 per cent—and I had previously talked with the Illinois Company, the Illinois Glass Company, regarding their interesting themselves in it, and they said they were not interested, and I then, as I customarily did, offered to them the investment if they cared to make it, and much to my surprise they were sufficiently interested in it, but they wanted all of it. I told them I felt I had done a great deal of work in working the situation up and that I ought to take part of it anyway. So they consented to me taking half of it. The net result was Mr. Harry Collin and his associates took $80,000 of it and I took $120,000.

[fol. 4083] Q. Harry Collin and his group furnished $80,000 and you furnished $60,000?

A. No. I furnished $120,000. The Illinois Glass purchased from me $60,000 almost at the same time.

Q. Harry Collin received a commission for this deal, did he not?

A. It was disclosed as another item, there was 1250 shares which he bought at some lower price than that, the difference between the $20 and what he bought it at, that was described in the circular. That was Mr. Collin's transaction. It was not mine. And also it was described in the circular that Mr. McMurtrie had some commission.

Q. So all the money that was paid by Lynch for acquiring Ed. Miller originated from either directors of Owens-Illinois or Hartford?

A. No. That is not so.

Q. He was a director, was he not?

A. He was a director but he probably was only lending his credit to that money. He probably had others who were taking off of his hands certain of those shares. At least I did. I didn't have that much money to enter into an endeavor of that kind. You will have to remember that was pretty hard times then.

Q. Hartford and Owens and directors of Owens either put up the money or furnished their credit for the deal by which Lynch purchased the Ed Miller Company?

[fol. 4084] A. That is not technically it.

Q. Hartford furnished $125,000, is that right?

A. No. Hartford bought certain rights from Lynch for which they paid $125,000.

Q. And Lynch used that to buy Ed. Miller?

A. No. Lynch had bought Ed. Miller and he had some terms with which to pay for it. He understood before he bought it that he was not going to be out on the limb. Generally these arrangements were worked up.

Q. Of course they were, and you helped work them up; you were the man directly responsible for working the whole deal up?

A. No. I had some of the suggestions. I don't think I was directly responsible.

Q. Who would you say was the person directly responsible for working out the whole deal?

A. I could not answer that because directly responsible is a pretty broad term. I will say I pulled the stroke oar in the thing, if that would satisfy your question.

Q. Before the final papers were drawn Hartford committed itself to pay $125,000 for the Ed. Miller and Lynch feeder rights?

A. That is a matter of record. The circular that was issued to the public indicates that.

Q. And another $125,000 was furnished by Owens for suction rights?

A. No. The Owens-Illinois Glass Company purchased [fol. 4085] the suction rights from the Lynch Corporation, for which they paid $125,000.

Q. They agreed to pay the money before it was paid over by Mr. Lynch to Miller?

A. I can't deny they did. I have no recollection. The circular to the public indicates clearly the transaction.

Q. And the $200,000 balance you furnished was $120,000 as you testified by yourself on a credit basis, and the other $80,000 by Harry Collin on a credit basis?

A. No. The other $200,000 was the proceeds of the sale of Lynch Corporation shares to Mr. Harry Collin and myself, in which we became nominee for our own interest and for the interest of others.

Q. Who, may I ask, were your interests and his interests?

A. 3,000 of the shares I bought went to the Illinois Company. Other shares were sold to friends and associates. I don't recall the transaction. They are all a matter of record in my income tax return.

Q. You took the bulk of it, did you not?

A. No. I don't think when I got through with it I had more than five or six hundred shares.

Q. Illinois Glass Company took 3,000 shares?

A. Yes, which they retained until liquidation. A stock dividend was paid, and when they liquidated they had 4500 shares.

Q. I show you Government's Exhibit 318, a telegram from Mr. Bridges to Lynch Corporation dated July 15, 1933, "Further conference this morning. Levis and Ber-
[fol. 4086] nard back this afternoon." Was that one of the conferences you had with Lynch Corporation at which you suggested to them it might be a good idea to buy out the Miller people?

A. No, I think this was entirely on machine matters. Mr. Bernard would not have had anything to do with that.

Q. I show you Government's Exhibit 321, a telegram from Mr. Bridges to Mr. Werbe, dated July 19, 1933, "Collin phoned that Belknap obtained very satisfactory agreement with Smith. Uz and I will meet Levis Friday afternoon at Toledo. You be at Antlers Hotel. Answer." Was that in connection with the proposed deal with Miller?

A. Yes.

Q. Is it a fair statement to say you negotiated the arrangement by which Lynch bought out the Miller people?

A. No. I would say that Miller negotiated that by wanting to sell his business and giving to Mr. Collin an option. I had nothing to do with Mr. Collin's securing of it whatever.

Q. Who was responsible for interesting the Lynch Corporation?

A. Mr. McMurtrie.

Q. What was his connection?

A. He was an investment broker in the city of Indianapolis, Indiana. He went to Mr. Werbe whom I think he knew subsequently, as a result of having made this arrange-
[fol. 4087] ment with him, he became a director of the company.

Q. Who went to Mr. McMurtrie?

A. Mr. McMurtrie, as I understand the circumstances, and I don't testify to the accuracy of this, was in Toledo on another matter that he was handling as a banking matter with Mr. Collin, and the other matter did not go through

and Mr. Collin told him of this, and he went back to Indianapolis and interested himself in it, which resulted in the purchase.

Q. Did you suggest to Mr. Collin that he might talk to Mr. McMurtrie about it?

A. I don't recall, but I don't deny he did.

Q. At any event, Mr. Bridges wired Mr. Werbe that Belknap obtained a very satisfactory agreement with Smith. Do you know what that agreement refers to, sir?

A. No, I don't, but I know at the time of that memorandum I was on a sailing race and they came here on Friday and it was bad weather and I didn't get in for the Friday conference, and I know I came in on Saturday, and I know it was that particular Saturday that I signed the document, so far as the agreement that I was making was concerned. Therefore I don't think that telegram has anything to do with the things that led up to the negotiations. I think it relates to the termination of the negotiation.

[fol. 4088] Q. I show you Government's Exhibit 322, which is a memorandum which states on it, dated July 18, 1933: "Handed to us by C.B.B. at Hartford", and ask you whether you ever saw that outline of the proposed agreement between Owens-Illinois and Lynch Corporation, "Subject to detail changes by T.C.W.", who we understand is Mr. Werbe?

A. No, I don't recall it. I don't deny I have seen it.

Q. It looks familiar, does it not?

A. May I take the time to read it?

Q. Certainly, sir.

A. (After examining same.) No, sir, that don't represent the transaction as ultimately consummated. There might have been some talk along that line but I don't recall it.

Q. Did I understand you correctly to say with reference to Government's Exhibit 321, which is dated July 19, 1933, that on that week-end something happened in connection with a fishing trip, that you had to come back late and you signed your firm commitment on some Saturday?

A. I have the commitment in my briefcase, if you would like me to look at it.

Q. I would like you to, very much. You said you signed the commitment on Saturday.

A. I am not sure as to the date. I qualify that.

(Witness is handed briefcase.)

A. (Cont'd.) It was too big to get in my pocket or I would have had it. (After referring to papers.) No, I am wrong, the commitment was signed on September 9, 1933. [fol. 4089] Q. You are talking about a different week-end?

A. Yes, sir.

Q. Had you orally agreed by July 19th you would take the commitment of $200,000?

A. I had orally agreed long before that. Mr. Werbe asked me whether I wanted to do it and I told him I was quite certain we would.

Q. Have you got any piece of paper that will show the exact date you made a commitment, orally or in pencil, other than a firm written commitment?

A. I haven't kept any diary, sir. I could probably refresh my recollection on it if you will give me until Monday to do so.

Q. That will be all right. I show you Government's Exhibit 168, which is a letter from Mr. F. Goodwin Smith to Amory Houghton, dated August 10, 1933, its subject-matter is primarily on the dispute Hartford was having with Hazel-Atlas regarding the period of time in which Hazel would have to get this decision in another Circuit Court of Appeals, and I direct your attention to the second page, the last sentence other than the last paragraph, where Mr. Goodwin Smith states:

"Levis has told McNash that he will not go through with the Miller deal or that he will not go through with the Lynch deal unless he, McNash, gives us the relief for which we are asking."

A. I don't recall that.

Q. Do you deny it?

[fol. 4090] A. I would deny it, because I don't remember saying it to Mr. F. Goodwin Smith.

Q. Do you think that Mr. F. Goodwin Smith would have said you said it, when he put it down shortly afterward; do you deny it categorically?

A. I said I don't recall it.

Q. You said you deny it?

A. I said I deny it, because I don't remember it. Read what I said.

(Read by reporter.)

A. Is that satisfactory?

Q. I am trying to get your answer. Do you categorically deny you told Mr. McNash you would not go through with the Miller deal and you would not go through with the Lynch deal unless Mr. McNash gave you and Hartford the relief which Hartford was asking for?

A. I don't know what you mean by "categorically".

Q. You say it never took place?

A. No, I say I don't remember it.

Q. Now who was representing Owens in connection with the negotiations by Owens on the one hand and Hartford, as to how much money was to be paid by Hartford and by Owens toward the purchase price that Lynch needed to pay the $450,000?

A. I guess I handled it so far as Owens was concerned, but I certainly didn't do it without discussion with Mr. Williams and my other associates.

Q. Mr. Belknap participated in those negotiations, too, [fol. 4091] did he not,—C. B. Belknap?

A. He was executive vice-president of the company, or a vice-president of the company, at that time.

Q. I show you Government's Exhibit 326, dated August 14, 1933, written, according to stipulation, by Mr. Safford, who states:

"The following is a resume of the discussion between Safford and C. B. Belknap in New York at The Biltmore on August 10th regarding the amounts and rights passing as regards the Lynch deal.

"1. Hartford to pay $100,000, equal to half, for the H & T applications.

"2. Hartford to pay $100,000 or $125,000 for combined Miller present feeder rights and Lynch's present and future feeder rights.

"3. Owens to pay $100,000, equal to half, for H. & T applications, they to get license to themselves and subsidiaries regardless of forming machine agreement of 7/1/32.

"4. Owens to pay for Lynch suction inventions including Miller present and future. $125,000 at least and $150,000 if H-E doesn't contribute.

"5. Lynch to sell additional stock to account for balance of Miller purchase.

$450,000 total will be paid for Miller.
Lynch will have to raise at least $200,000."

Is that your recollection of what transpired on or about that date?

[fol. 4092] Mr. Middleton: May we inquire who the author of this is?

Mr. Isseks: Mr. Safford, by stipulation.

A. That is generally it, yes sir. I don't know anything about this memorandum, and I would have to refresh my recollection from my own records to say specifically, but this was generally the understanding.

Q. And by that time, August 14, 1933, you had already told Mr. Werbe or his group you would furnish the $200,000?

A. No, I didn't sign the commitment until a later date.

Q. As a matter of fact you didn't sign the commitment until the transaction actually took place? The transaction took place on August 23 and 24, subject to correction.

A. My own note shows August 23.

Q. That is all right. All signed the same date. Was Lynch going to go ahead and make a commitment to pay $450,000 without having some kind of arrangement by which it would be told to make payment of its money?

A. You will have to ask Mr. Werbe, because I don't know.

Q. I am asking you because you were there at the time and I was not.

A. I cannot answer to what Lynch would be willing to do.

Q. Was anything said about that by Lynch, that they would be willing to go ahead without getting the money?

A. I don't recall. I don't deny it.

Q. Did Mr. Werbe say, "All right, I will take your word for it?"

A. Mr. Werbe would have taken my word.

[fol. 4093] Q. Do you remember telling it to him?

A. No, I don't recall the fact.

Q. At this time I want to refer to the various pieces of paper, Lynch agreement dated August 23, 1933, between Owens-Illinois and Lynch, for the payment of $125,000, and

between Lynch Corporation and Hartford, dated the same date, and a recital of $125,000, and then the agreement between the Hartord-Empire and Lynch, the license going from Hartford-Empire to Lynch, dated August 22; and Exhibit 327, dated August 21, 1933, the contract pursuant to which the Lynch Corporation agreed to pay $450,000,—my question is, having in mind the contract for the purchase by Lynch of Miller dated one or two days before the payment—two days before the payment of $125,000 by Owens and Hartford, respectively,—do you have any recollection of what arrangement you made, you and Mr. Harry Collin, with the Lynch Corporation to make sure they would get that $200,000?

A. No, I don't have any recollection. I have here the opinion of counsel, and the copies of,—signed and executed copies of the various commitments.

Q. I show you a memorandum dated August 21, 1933, written by you, addressed to your secretary, or rather, to your treasurer, in which you say—Government's Exhibit 743—you refer to the action taken by the board and you state you and Mr. Hazelton have approved a license prepared by Mr. C. B. Belknap whereby your company is to secure the exclusive right to the suction developments of [fol. 4094] the Lynch Corporation for payment of $125,000 in cash. You testified before you told your board also you were going to have a participation in the Lynch stock?

A. I have an opinion of counsel that the company don't object to it.

Q. You did ask your board's approval for paying $125,000?

A. That letter indicates that; yes, sir.

Mr. Middleton: May I ask the intent of that question, whether the question is as to the authority of his board to make that payment for and on behalf of the board, or whether he asked the board whether it had any objection to him personally making the payment?

The Court: I think it is the latter.

Mr. Middleton: Perhaps there is an ambiguity there.

The Witness: No, it is the former that the memorandum covers, sir.

Q. I show you Government's Exhibit 169, letter dated August 24, 1933, addressed to Mr. Amory Houghton, signed by F. Goodwin Smith, in which he says:

"We signed the Lynch papers a little after 6 yesterday afternoon. Yesterday morning Bill Levis gave me, for the first time, all his reasons for the extra $50,000—$25,000 of which he paid and $25,000 of which he thought we ought to pay. There was some logic and some justification for his contentions. Therefore, I paid our share. Levis says [fol. 4095] that after thinking it over further if we want him to send us $25,000, he will be glad to do so."

First of all, was it contemplated you would pay only $400,000, that Lynch would pay only $400,000 for the Miller Company?

A. I think as indicated in several of the memoranda, that amount was not firmly decided.

Q. There is one dated August 14, 1933, where it is pretty clear it is going to be $450,000, total, memorandum by Safford?

A. No, that memorandum says Hartford would pay $100,000 or $125,000 and Owens would pay $125,000 or $150,000. I mean the amount was still ambiguous. There were some of the assets we hadn't yet determined upon.

Q. The price, apparently, was pretty well determined that Lynch was going to pay $450,000 total to Miller?

A. That is ten days before this.

Q. You say you might have seen that in the interval?

A. I might have or might not have.

Q. What was the reason you gave for the extra $50,000?

A. I don't know. There might have been more assets, or something we were to acquire. I don't recall the specific reason.

Q. Would you say that extra $50,000 was not reflected otherwise?

A. No.

Q. It was $450,000 all told?

[fol. 4096] A. That is right, may I have that memorandum, Ex. 326, so I might look it up, which might be of some assistance?

Q. Certainly.

A. The question, as I see it, $450,000 was always the amount involved, and clause 2 says Hartford would pay $100,000 or $125,000 and Owens, in clause 4, it says that Owens would pay $125,000 or $150,000. If we both paid $125,000, that would make $250,000, and if they paid $100,000 and we paid the other $150,000, we would get $250,000. I

mean there was some question whether or not they were to get certain things or Owens was to get certain things.

Q. He says in this letter:

"Yesterday morning Bill Levis gave me, for the first time, all his reasons for the extra $50,000,—$25,000 of which he paid and $25,000 of which he thought we ought to pay."

What I am puzzled about is, whether there is more money involved than the $450,000 referred to in Mr. Safford's memorandum.

A. $450,000 was the whole deal.

Q. Shortly thereafter, on September 22, 1933, your company paid another $100,000 in connection with the purchase by Owens and Hartford of the Headley & Thompson application. I show you a letter to Mr. Phillipps, copies to Mr. Hazelton and Mr. Belknap, and ask you whether that refreshes your recollection—Government's Exhibit 744?

A. Yes, sir.

[fol. 4097] Q. Now, I ask you now whether, in the light of all the memoranda you have seen, whether it is not a fact that the Lynch-Miller deal and the various contracts between Hartford and Lynch, Owens and Lynch, and Lynch and Hartford, were not all part of a means of bringing about a forming-machine pool?

A. My testimony isn't any different on that, sir, than the detailed testimony I have given three times this afternoon.

Q. See if I cannot refresh your recollection. I show you a memorandum dated October 9, 1933, Government's Exhibit 745, written to you, signed by C. B. Belknap, vice-president, and see if it does not refresh your recollection that all of these various exchanges of the money by Owens, by Hartford, by yourself, by Mr. Collin, was not part of an arrangement to bring about a forming-machine pool whereby all the policies in connection with forming machines would be in the hands of one company, namely, Hartford-Empire Company?

A. Forming machines in connection with feeders—I will again testify, sir—that a forming machine in connection with a feeder is just another means whereby you blow a bottle. The feeder is one method of putting the charge

into the blow mold, and suction is another. Suction either gets its charge from a revolving pot or a stationary pot. The same type of movements and patentable inventions relate to both types of machines, and it would have been [fol. 4098] very foolish of us to have wanted a patent pool for one kind of a situation when we were spending large sums for the development of other inventions in suction.

Q. I ask you to look at——

A. May I read this?

Q. Certainly, you read it. See if it is not a fact all these transactions—Headley & Thompson, Ed Miller, Lynch—were all directed to bring about, as Mr. Belknap says in his memorandum, Government's Exhibit 745, a forming-machine pool.

• • • • • • •

[fol. 4099] A. That memorandum sets forth exactly my views, sir.

Q. Mr. Belknap says at the end:

"In order to round out the forming machine situation, the Lynch Corporation purchased the Miller Machine and Mold Works and also took a license from Hartford whereby the users of Hartford-Empire's feeder equipment could have the use of the Lynch and Miller forming machines without the payment of additional royalties. Such an arrangement not only removes the possibility of complicated litigation relating to forming machines, but it brings together into one hand the licensing of feeder and forming machines. I believe this straightening out of the forming machine situation is one of the most important advances made in the industry, and it is a long step towards a unit system of licensing whereby Hartford-Empire can furnish the manufacturer with a complete outfit from furnace to stacker at the cost of a single license fee."

Did you agree with that?

A. I don't know that I agreed that I wanted Hartford to be the exclusive owner; but I certainly was in favor of this being the plan that I thought was more acceptable. It gave the smaller and larger manufacturer who wanted [fol. 4100] to use these devices a far better deal than they previously had. I thought if Hartford took the royalty

of their lehrs and other gadgets, it would be one of the foremost steps in the industry.

Q. Is it not a fact after the agreement since August, 1933, until a date in 1938, no one could use a forming machine in this country—acquire it commercially, I mean, from either Lynch or Lynch's subdivision, Ed. Miller, or from Hartford, without contracting to pay royalty?

A. No, that is not a fact.

Q. Where could they go?

A. I testified in the TNEC they could go to the Roirant Machine; Ball Brothers had the Moorshead Machine; we had the Graham Machine. They were numerous. This was not an all-inclusive pool.

Q. This was a pool, but it was not all-inclusive?

A. It was not a pool.

Q. If anybody tried to buy, from August 25, 1933, until some date in the latter part of 1938, a Lynch forming machine, or Ed. Miller forming machine, he had to get a Hartford license?

A. If he bought from Lynch. I know fellows who bought from other people, who bought them from Lynch.

Q. A little bootlegging?

A. It is your description, not mine.

Q. What would you call it?

[fol. 4101] A. I know people who purchased from others who bought them from Lynch.

Q. Tell us who they are, please.

A. Obear Nester bought some.

Q. Whom did they buy them from?

A. I don't know.

Q. They bought them from somebody other than Lynch?

A. Yes, sir.

Q. Anybody else?

A. I don't know. There may have been others.

Q. Did you buy some from people who got them from Lynch?

A. No, sir.

Q. You said you knew lots of people; you mentioned one; do you know more than one?

A. I should like to refresh my recollection on it.

Q. "but it brings together into one hand the licensing of feeder and forming machines."

Who was, according to your understanding—you received it—that one hand?

A. It was not in one hand. We had our licensing of the forming machine. Mr. Belknap testified here under certain rights we had we could have licensed the Graham machine with the Tucker, Reeves & Beatty feeder.

Q. Mr. Levis, you got this memorandum. It says, "but it brings together into one hand the licensing of feeder and forming machines". Whom did you understand, when you received this in October, 1933, that Mr. Belknap [fol. 4102] meant; that is my question?

A. I assumed he meant Hartford.

Q. That memorandum relates to "Forming Machine Situation". The same day Mr. Belknap, vice-president, wrote you a memorandum, which is Government's Exhibit No. 746, called "Suction Machine Foreign Rights". In the first paragraph,—

"In the purchase of the O'Neill assets and the suction rights of Lynch (which includes those secured by Lynch from the Miller Machine & Mold Works), the company has substantially rounded out its program for protection in the U. S. of its suction machine rights. These acquisitions, together with the contract which we have to take over Hartford-Empire's suction machine developments, enables this company to proceed, for all practical purposes, with a free hand in its suction machine developments."

Does that conform to your understanding as to one of the reasons for the O'Neill arrangement and the Lynch and Miller deal?

A. Yes; and the Hartford-Hazel contracts of 1932.

Q. Under which you had an option to pick something else up?

A. Yes; we had a right to Hazel's developments.

Mr. Isseks: Your Honor, at this time I should like to have marked as the next government's exhibit a memoran- [fol. 4103] dum,—a letter dated May 11, 1934, addressed to Mr. T. C. Werbe; signed Harry E. Collin; stipulated by Lynch at page 18.

The Clerk: No. 841.

Mr. Isseks: Stipulated as genuine by Lynch, Your Honor, at page 18 of the Stipulation.

The Court: It may be admitted.

Thereupon, Government's Exhibit No. 841 was read to the Court by Mr. Kramer, of counsel for the government.

Q. I direct your attention to the next to the last paragraph, and ask you whether Mr. Collin's statement as to what you said is substantially true?

A. No.

Q. You say what he says is not true?

A. I have talked with him since. He does not even recall it. And I do not. I thought he might have added to it. It is purely a sales letter to Mr. Werbe, as I see it.

Q. What was he trying to sell?

A. His services as a banker.

Q. He had been paid already?

A. No. He sold to the Lynch Corporation, I think, a meat cutting machine.

Q. Mr. Collin did?

A. Oh, yes. They have diversified their business tremendously. They make type-setting machines, lifts for fill-

[fol. 4104] ing stations, and compressors for refrigerators.

Q. Who does that?

A. The Lynch Corporation.

Q. You say when Mr. Collin quoted you on May 11, 1934, that what he said was not accurate?

A. I will say I don't recall ever saying it to Mr. Collin, and Mr. Collin does not recall my having said it. If it is so, I will not deny it. He is talking about a half a million dollars in sales; not a half million dollars in profits; because I don't think the Lynch Corporation is worth one-half a million dollars, let alone having that much earning possibilities over one lawsuit.

Q. You deny that you made the statement?

A. No, sir.

* * * * * * * *

Mr. Isseks: I should like to offer the reply, unless Your Honor wants to suspend at this time.

* * * * * * *

[fol. 4105] Mr. Isseks: It is dated May 16th, 1934, Government's Exhibit No. 842, addressed to Mr. Harry Collin, signed T. C. Werbe; stipulated as to genuineness by Lynch, at page 18.

Mr. Werbe, Your Honor, is a defendant in this case.

The Court: It may be admitted.

Thereupon, Government's Exhibit No. 842 was read to the Court by Mr. Shields, of counsel for the government.

Q. Did you tell Mr. Werbe, at White Sulphur Springs, in 1934, you felt the Shawkee case would mean a great deal to Mr. Werbe?

A. I don't recall it, but I do not deny having told him.

(Evening adjournment.)

[fol. 4106] (Thereupon, at 10:00 o'clock A. M., Monday, April 21, 1941, the hearing was resumed.)

The Court: You may proceed.

Mr. Isseks: Your Honor, at this time I would like to call Your Honor's attention, through some inadvertence, Exhibit 829, which is a letter dated February 6, 1935, from the witness to R. H. Levis, and Exhibit 830, which is a letter dated February 12, 1935, from the witness to H. C. Mandeville, were not admitted by Your Honor, although offered at page 2707 and 2713.

The Court: I have them both marked as having been admitted.

Mr. Isseks: I thank you. That is a stenographer's mistake.

The Court: That is the state, they are now admitted.

Mr. Isseks: At this time I offer in evidence Government's Exhibit 843, a letter written on March 27th, 1933, written by the witness to Mr. F. Goodwin Smith, stipulated as genuine by Owens-Illinois at page 23.

The Court: It may be admitted.

(Government's Exhibit 843 read by Mr. Apsey.)

Q. Did you write that letter, sir?

A. Yes, sir.

Mr. Isseks: At this time I offer in evidence Government's Exhibit 844, a letter dated October 21, 1929, written to Mr. Stanton Griffis, signed by H. C. Mandeville, stipulated as genuine by Thatcher at page 6 of the Stipulation.

[fol. 4107] Mr. Emery: If the Court please, may I have the objection that the document may not be received as proof of the statements therein contained?

Mr. Isseks: Why, Your Honor, it seems to me when Mr. H. C. Mandeville, a defendant in this case, will make the

statement in the second paragraph, it has to be admitted for the proof thereof.

Mr. Emery: I wanted to add, to save the question of privilege that is being involved by Mr. Mandeville's writing to one of the directors of his own company.

The Court: Was he an officer of the company at that time?

Mr. Isseks: Chairman of the Board.

The Court: The objection will be overruled. It may be admitted.

Mr. Fuller: Is this being offered for a limited purpose?

The Court: Not for a limited purpose.

Mr. Isseks: All purposes.

Mr. Fuller: Then, if the Court please, I should like to call attention to the last paragraph on the first page, which continues to the second page, "This morning I had a telephone call from Stanley Ayres that the Hocking Glass Company were probably willing to come in on the basis that the figures showed, taking a part preferred and a large proportion of common." That is clearly hearsay.

[fol. 4108] The Court: I expect that constitutes hearsay.

Mr. Isseks: Who is Mr. Ayres? Was he an officer? If he was not an officer of Hocking I am willing to offer that for a limited purpose.

The Court: All right.

Mr. Fuller: I thank you.

Mr. Isseks: May I have it read, sir?

(Government's Exhibit 844 read by Mr. Apsey.)

Q. Mr. Levis, I direct your attention to the second full paragraph of that letter, and ask you whether it sets forth in substance the conversation which you had with Mr. H. C. Mandeville on or shortly prior to October 21, 1929?

A. I don't recall it but I don't deny that I had such a conversation.

Mr. Isseks: At this time I offer as Government's Exhibit 845 a letter dated May 6, 1930, written to Mr. H. C. Mandeville by Charles R. Tips, stipulated by Thatcher as being genuine at page 7 of the Stipulation.

Mr. Emery: Same objection as previously noted.

* * * * * * *

[fol. 4109] Mr. Isseks: I offer it for the limited purpose, subject to asking the witness questions about it.

The Court: Very well.

* * * * * * *

Q. Mr. Levis, I direct your attention to the second full paragraph, and ask you whether Mr. Tips sets forth there the substance of the conversation which you had with him shortly prior to May 6th, 1930?

A. It would appear there was a typographical error there.

Q. Where is that?

A. That last sentence: "Mr. Levis told me that if the final say-so about receiving the Hartford license on our ware had been up to him, that in a spirit of live and let live he had no objection to our receiving this license." I would say that it did.

[fol. 4110] Q. Otherwise you would disagree with what Mr. Tips said took place?

A. Yes, the final say-so was not up to me, sir. If it had been up to me I would have been glad to grant him a license; even if it were not up to me I would have been glad.

Q. You had a veto power if the field were expanded at that time?

A. Yes, but that wasn't the final say-so.

Mr. Isseks: In view of the witness's statement I would appreciate it if counsel for Thatcher Company would produce the original. This is only a copy.

The Court: Very well.

Q. Now, Mr. Levis, did your company, shortly after the date of this letter, which is May 6th, 1930, acquire the Berney-Bond Glass Company?

A. Yes, sir.

Q. What was the purpose for which your company acquired the Berney Bond Glass Company?

A. To enter into the manufacture of milk bottles.

Q. Up to that time your company was not manufacturing milk bottles?

A. Never had.

Q. And the purpose was to acquire a factory that was in the business of manufacturing milk bottles?

A. Yes.

Mr. Middleton: I assume Mr. Isseks means he acquired [fol. 4111] the assets and not the common stock.

Mr. Isseks: This is not a Clayton Act case.

Q. Was it a purchase of assets or of common stock?

A. Purchase of assets. I will give you the date if you want it in the record.

Q. I will take the date.

A. The contract was dated July 10, 1930, and the transaction was as of December 31, 1929.

Mr. Isseks: In view of the witness' statement I am not going to offer a paper which is in Your Honor's book, to save the record.

Q. Mr. Levis, did you also acquire in 1930 another company which was in the manufacture of milk bottles?

A. The Atlantic Bottle Company. And that contract, as I testified the other day, was dated January 20, 1931, and the transaction was as of October 31, 1930.

Q. That, again, was the acquiring only of assets, or the common stock?

A. The assets.

Q. In that connection was one of the considerations which your company took into account in acquiring the Atlantic Bottle Company, the fact you would be paid royalties, you would participate in royalties to the extent of 50% of the royalties?

A. That is in that memorandum to the board.

Q. And you wrote it?

A. Yes, sir.

Mr. Isseks: In view of the witness' statement I will not [fol. 4112] offer it; it is rather long,—to save the record.

At this time I offer in evidence Government's Exhibit 846, a letter dated August 15, 1930, addressed to the witness by Mr. H. C. Mandeville, stipulated as genuine by Thatcher Manufacturing Company at page 7 of the stipulation.

The Court: It may be admitted.

(Government's Exhibit 846 read by Mr. Kramer.)

Q. Mr. Levis, what was your interest at that time in the financial condition of Turner Glass Company?

A. I was talking with Mr. Mandeville about getting another large unit in the glass industry, and we talked about

this and other things. This is the Mr. Mandeville who in 1936 was still worried about interest on his money, and wanted me to help him invest, and thus, over a period of six years, we are still talking about it.

Q. Am I correct in my understanding that as early as 1930 you were interested in bringing about these various combinations?

A. As early as 1929, from the Griffis letter you introduced this morning.

Q. Isn't it a fact your interest in the Turner situation was because if Turner went to the wall, that much more capacity would be withdrawn from the industry and become available to everybody else?

A. No, sir, I had never seen anyone fail and go to the wall where any capacity was available. Those things just [fol. 4113] happened as the natural course of business; somebody picked them up and they went on with them.

Q. In that connection I direct your attention to Exhibit 127, as to which objection was made on the ground it was privileged, a document written by Mr. Lloyd T. Williams, and the Court has deferred any decision on the matter. I direct your attention to the third full paragraph and ask you whether it does not refresh your recollection one of the matters you took into account in connection with the Turner situation was that if it went to the wall that much more capacity would be withdrawn from the industry and thus help the industry, regardless of who gets the business?

A. Turner Brothers didn't go to the wall. General Glass bought them. It is just the same thing we went through with anyone who was about to fail because of poor management.

Q. My question is whether you were interested in the fact if it went to the wall the capacity would be withdrawn from the industry and thus help the industry regardless of who got the business?

A. I wasn't interested, because I knew that would not happen; it never did.

Mr. Isseks: At this time I offer as Government's Exhibit 847, memorandum dated October 16, 1930, written by the witness, stipulated by Hartford as coming from its files.

Mr. Emery: To whom?

[fol. 4114] Mr. Isseks: Not addressed to anybody; just a memorandum.

Mr. Emery: I would like to have an objection as to this, on the ground I stated previously, concerning Thatcher Manufacturing Company.

The Court: You may have your objection. It may be admitted.

(Government's Exhibit 847 read by Mr. Apsey.)

Q. Did you write that memorandum, sir?

A. Yes.

By Mr. Isseks: At this time I offer in evidence as Government's Exhibit 848, letter dated November 4, 1930, written to the witness by Mr. H. C. Mandeville, chairman of the board, which was furnished to us in the last few days by Mr. Emery, pursuant to a request.

The Court: It may be admitted.

(Government's Exhibit 848 read by Mr. Lewis.)

Q. Did you receive that letter, sir?

A. Yes.

Mr. Isseks: At this time I offer as Government's Exhibit 849, a letter dated November 6, 1930, written to Mr. H. C. Mandeville by the witness, stipulated as genuine by Owens-Illinois at page 19 of the stipulation.

The Court: It may be admitted.

(Government's Exhibit 849 read by Mr. Kramer.)

Q. Did you write that letter, sir?

A. Yes, sir.

Mr. Isseks: At this time I offer in evidence as Govern-
[fol. 4115] ment's Exhibit 850, a letter dated November 10, 1930, written to the witness by Mr. H. C. Mandeville, stipulated both by Thatcher and by Owens-Illinois.

The Court: It may be admitted.

(Government's Exhibit 850 read by Mr. Kramer.)

Q. Did you receive that letter, sir?

A. Yes, sir.

Q. Mr. Levis, what was your interest in the Turner situation in 1930?

A. What is that?

(Question read.)

Q. I mean Owens-Illinois; what was the interest of Owens-Illinois Glass Company in the Turner Glass situation in 1930?

A. I don't recall specifically, but, generally, about that time it would have been to have gotten our half of the royalty that they might not have paid had they failed.

Q. Isn't it a fact you also were interested in an effort to enlarge your license so as to include pressed ware?

A. Yes, we wanted—oh, that was Monongah, not Turner, unless at that time Turner owned Monongah.

Q. That is right. I direct your attention to Government's Exhibit 651, which is a letter dated October 23, 1930, addressed to Mr. F. Goodwin Smith, by Henry W. Carter, where it says, in the second paragraph:

"Mr. Levis has requested me to ascertain whether the situation of the Turner Glass Company, as recently developed, would enable you to enlarge our license so as to [fol. 4116] include pressed ware and particularly the line of pressed tumblers and the like, recited, as having been given to the Monongah Glass Company in Schedule "C" appearing on page 33 of our general license agreement of April 9, 1924."

That was your interest?

A. Probably. I know we always wanted that license and we got it in 1932.

Q. After Monongah went through the wringer?

A. No, we got a right to everything in 1932.

Q. By that time Monongah had gone through the wringer?

A. I couldn't tell you. It is a matter of record.

Q. It was no longer in business in 1932?

A. Probably so, I don't know.

Q. Now, I show you Government's Exhibit 652, and direct your attention to the second paragraph, where Mr. F. Goodwin Smith, writing to Mr. Carter, says on October 27, 1930:

"Confidentially, the Turner situation does not look at all good, and I wired Mr. Levis this morning to see if he was going to be in New York this week, as I want to have a talk with him about it."

Do you have any recollections about having any personal conversations with F. Goodwin Smith about the Turner situation?

A. Oh, I don't recall it; I don't deny it; but our interest [fol. 4117] in it was it would be a bad thing on account of royalties; we would have to get our half of the money back.

Q. You were also interested in getting an interest in the pressed-blown ware rights?

A. I don't know whether I was interested; I was curious.

Q. About this time, October, 1930, you learned, did you not, that Illinois Pacific Company was interested in acquiring Southern Glass Company?

A. I was a director of the company. The Illinois Glass Company had a very large interest in it, and I was probably advised by the other directors of the Illinois Pacific Company that was so.

Q. Do you recall before Hartford would permit Illinois Pacific to acquire certain Bethel feeders, your consent had to be obtained?

A. No, sir.

Q. I call your attention to Government's Exhibit 653, letter dated October 24, 1930, addressed to you by Mr. Carter—I think that is the testimony in the case, at least it was offered through Mr. Carter—and I direct your attention to the enttire memorandum,—the first part of it opens:

"Knox Smith called up this morning to say that Hartford had received the following proposition from Cole of Illinois Pacific Coast——

I. P. C. has a deal on to take over the business of the Southern Glass Company at Los Angeles. Southern is [fol. 4118] to retain its land and receivables, and in addition is to receive from I. P. C. a sum sufficient to make a distribution to Southern stockholders of five hundred thousand dollars, one dollar per share. The factory building is to be wrecked by I. P. C. and the machinery transferred to an I. P. C. plant, except for its Bethel feeders. Knox thinks there are twelve of these.

"Cole's proposition to Hartford is that these twelve Bethel feeders will be turned over to Hartford in consideration of a complete release by Hartford of all claims to profits or damages arising from the previous operation of these feeders by Southern.

"Knox expressed the view that the proposition was one which they should accept, and after talking to you, I wired him as follows:

"'Proposed release Southern Glass per telephone talk entirely satisfactory.'"

Does that refresh your recollection?

A. It refreshes my recollection, but I am quite satisfied I had nothing to do with it. Mr. Carter may have misquoted. I was a director of the Illinois Pacific Coast Company. The investment in that company which the Illinois Glass Company owned was one purchased as one of the assets which Owens-Illinois Glass Company purchased from Illinois Glass Company, and I made it my business throughout any negotiation in which that company was concerned, to have nothing to do with it, and I am quite satisfied Mr. [fol. 4119] Phillipps or Mr. Hazelton, who looked after those matters, would have given that their attention; I would not have had anything to do with it.

Q. You dispute the statement made by Mr. Carter: "Knox expressed the view that the proposition was one which they should accept, and after talking to you"—it is addressed to you—"I wired him as follows: 'Proposed release Southern Glass per telephone talk entirely satisfactory.'"

A. I don't dispute it but I won't say under the circumstances I am quite satisfied. I have no recollection other than what I have stated.

Q. I thank you, sir. Now, I direct your attention to the same exhibit, 653, the last paragraph:

"Answering with regard to our inquiry of yesterday as to the possibility of an extension of our license to include pressed ware, and particularly tumblers, Knox said that he had been in communication by long distance with Goodwin in Indianapolis, that in reply Goodwin had stated that he was finding the going difficult and could not give much instant consideration to our inquiry, but would bear the matter in mind."

Does that refresh your recollection as to any conversation you had at that time regarding the dispute?

A. I don't deny I had such conversation. I know we wanted the right to make pressed ware, which we subsequently got.

[fol. 4120] Q. Of course, if Monongah had not gone through bankruptcy Monongah would have retained the exclusive right to pressed ware and tumblers?

A. No, there were other licenses. Mr. Rieman testified Capstan had one.

Q. On Tucker, Reeves & Beatty feeders?

A. I don't know how it was. I know Hocking Company made that kind of ware, and Federal Company made that kind of ware. We never made any tableware. And I thought if we could get the right, we would like to have it. We subsequently got it, in 1932.

Q. Was it a condition precedent before you could get it, either that Monongah consent or go through the wringer, to quote Mr. Mandeville?

A. I don't think so. I don't know whether Hartford had any licenses at that time which would prevent them from granting one to us.

Q. In any event you got it in 1932?

A. Everybody got it in '32 that was interested. Hazel had made the type of ware. In 1932 we wanted to be on an equal basis with Hazel; there wasn't any mystery.

Q. By that time Monongah had gone through bankruptcy?

A. I told you I didn't recall the date it went out of business. I knew from Mr. Heintzelman, I knew his personal grief in losing the business.

Mr. Wall: There was no bankruptcy, as far as I know.

Mr. Isseks: I mean receivership.

[fol. 4121] Mr. Wall: Liquidation by arrangement with bondholders.

Mr. Isseks: All right, I withdraw my statement and I accept Mr. Wall's substantially as made. They were going out of business through some court procedure. I accept his statement. Liquidation after receivership. We will have some testimony on that.

The Witness: There is one letter here that clears the whole thing up.

Q. I think you have given two reasons why you were interested in Turner, perhaps three. I will see if I cannot summarize them. One was your interest in the royalties, your share in the royalties, so that you didn't want any company in bad condition obligated to Hartford. Am I summarizing it correctly?

A. You are not stating it correctly.

Q. You state it.

A. I was interested in what was happening in connection with Turner because if they stayed in business we were apt to get our half of the royalties. If they failed we might have a bad account.

Q. The other reason was the effort to get the right to make the pressed ware and tumblers?

A. I don't feel Turner had anything to do with our getting that right. Hartford could grant it.

Q. Do you recall that in Government's Exhibit 651, letter from Mr. Carter to F. Goodwin Smith, where it is stated in the second paragraph:

[fol. 4122] "Mr. Levis has requested me to ascertain whether the situation of the Turner Glass Company, as recently developed, would enable you to enlarge our license so as to include pressed ware."

Do you dispute what Mr. Carter says?

A. No, sir. I was curious to get the license. We got it. There was no mystery about it.

Q. Were there any other reasons? I think you said it had something to do with Mandeville's trying to bring about a combination?

A. Mr. Mandeville was interested in the combination, in acquiring a plant in the Indiana territory, one on the coast, one in the Mississippi Valley, and one in New Jersey. As he stated, he talked with Whitall-Tatum, he was interested in Obear Nester, he was interested in Turner. I think Mr. Mandeville subsequently has caused Thatcher to acquire a half-interest in General Glass Company, which was a successor to Turner.

Q. You know all about that and we will come to that. You are familiar with the transaction?

A. I am partially familiar, not entirely familiar with it.

Q. Any other reason for your interest in Turner in 1930?

A. Not that I recall.

Q. Isn't it a fact you were interested in Turner because of the competitive situation?

A. I was interested in Turner because of the competition.

Q. Turner was a direct competitor?

A. Everybody was.

[fol. 4123] Q. Everybody in the glass business was a competitior?

A. Yes, sir. I think we made everything, and everybody else made something.

Q. I show you Government's Exhibit 654, which is a letter addressed to Mr. F. Goodwin Smith by Owens-Illinois Glass Company, and the third full paragraph—take the first paragraph——

"Mr. Levis is continually after me for the latest developments in the Turner situation."

Was that true?

A. No, sir.

Q. You dispute what Mr. Carter said at that time?

A. I was never after anyone continuously about anything.

Q. Do you categorically deny what Mr. Carter says in a contemporaneous memorandum on December 20, 1930, in the reference December 20, 1931, he writes to Mr. F. Goodwin Smith?

A. If you tell me what you mean by "categorically", I will.

Q. Do you say that he is lying?

A. No, sir, he is not lying, but Mr. Carter's words are not accurate. I never was continuously after Mr. Carter for anything.

Q. Were you talking to him about it?

A. From time to time probably discussed it.

Q. And he says, in the third full paragraph:

"Mr. Levis is anxious to know the facts up to date as fully and completely as possible, particularly because of the bearing they may have on our competitive situation which, [fol. 4124] as you know, is already very difficult. He also has in mind the ultimate disposal of the Monongah license and the effect this may have on the question of opal licenses."

Was Mr. Carter stating accurately your attitude of mind at that time?

A. No, just stating it generally, in his words.

Q. Generally does it state your attitude of mind at that time?

A. Yes, sir.

[fol. 4125] Q. Now, coming to this General Glass Company matter that you were familiar with. You said—I believe you volunteered that Mr. Mandeville finally got Turner in to General Glass Company. What is your pres-

ent recollection of what transpired at that time in 1930 or '31?

A. As to the dates, they are a matter that I can't state accurately from memory, but my recollection is that the Turner Company which was subsequently operated by Mr. Hartley did become the General Glass Company, and it acquired Monongah, and that it operated it as the General Glass Company for another year or two, and that it then became involved financially, and in the interim a note issue had been put out upon the General Glass Company and that those notes had been sold to the public. The question was of foreclosure by the trustees of the notes, and the Hocking Glass Company and the Thatcher Glass Company satisfied the trustees by entering into some kind of an arrangement whereby they guaranteed the interest on those notes for a period of time, in consideration of they having permission to use the assets, and they had some sinking fund provision in those notes whereby some portion of the profits, something like $75,000 a year would be used to work against the sinking fund provision of the notes. I don't think there was ever any purchase of the General Glass Company by them, but they added additional assets to the property which were subject to mortgage, and it [fol. 4126] finally developed to a point where they operated the General Glass Company because of their guaranteeing to pay the bondholders' interest. That is my recollection of the transaction.

Q. Were you consulted by anybody?

A. No, I don't think I was consulted by anyone. My early recollection is that a man by the name of Woodruff from Joliet, Illinois, whom I have known for a good many years, running a banking house there, he was the fellow whose banking house had underwritten the General Glass Company notes and thought he was going to be involved in being thrown in the glass business if the notes were foreclosed, and he talked to me about it in Chicago, and I introduced him to Mr. Collins and Mr. Mandeville.

Mr. Fuller: May I state an objection?

The Court: You may.

Mr. Fuller: If the Court please, I haven't interrupted the witness thus far with respect to General Glass, but I simply would like the record to show at this time that the general objection on the ground of —materiality, in-

competency and irrelevancy which Your Honor has preserved for each defendant as to the evidence for connective purposes, that with respect to that objection insofar as Anchor Hocking and the various members of the Anchor Hocking group is concerned, it is our position that objection as to competency includes the objection that General Glass during the period of its existence was at one time [fol. 4127] only a 50 per cent owned subsidiary of Hocking and subsequently a subsidiary of Hocking, the assets of which were only purchased by Anchor Hocking, and that therefore evidence of the activities of General Glass and its representatives are neither relevant nor competent for connective purposes, and I should like a continuing objection on each ground if I may have it.

The Court: You may have it.

Q. Do I understand you to say you introduced Mr. Woodruff to Mr. I. C. Collins and Mandeville?

A. That is my recollection.

Q. Whereabouts?

A. I think it was in New York.

Q. Were you present when the conversation took place?

A. No.

Q. Just left the room?

A. Yes.

Q. How did that matter come about; did Mr. Mandeville or Mr. Collins ask you to introduce them to Mr. Woodruff?

A. No. It is just as I testified. Mr. Woodruff saw me in Chicago and asked me whether I knew anybody that would be interested and I told him maybe these people would.

Q. What was the purpose of introducing them?

A. I guess just to do my good deed for that day.

Q. You were not interested at that time in bringing about a strong combine company in the industry?

A. I was always interested in that.

Q. Wasn't that the main reason of bringing them together, to build up a strong combination for the purpose of stabilizing the industry?

[fol. 4128] A. The word "stability" as you use it is difficult to define, but it was no more than to get better wages, better working conditions, lower costs, and create a competitive condition so we might be able to take more of the market that was being supplied by tin containers and paper

containers. I think there was one crusade in my mind, we thought we would have a better industry if we had a few large companies who could do those things besides a few small companies.

Q. You don't question you had in mind bringing about a discussion which would tend towards stabilizing the industry?

A. I don't question I was trying at all times to arrive at stability.

Q. I show you Government's Exhibit 275, which is a memorandum of a conference written by Herbert Knox Smith on February 10th, 11th, 1931, and I direct your attention to paragraph No. 9 where it stated, "Both Messrs. Mandeville and Collins said that they would not be interested in any of the above possibilities unless they felt that it would lead up probably to the main combine; and that this combine seems particularly desirable, (a) Because it would take in two strong companies, each with a good cash position—something like 2,000,000 in Thatcher and a Million and a Quarter in Hocking, (b) Would have a strong personnel in Messrs. Mandeville and Collins, and their assist-[fol. 4129] ants, (c) Would, if they got in all the Hocking, Thatcher, Turner and Monongah fields, have the broadest license in the industry and be able to make practically all forms of ordinary glass, (d) Would establish the desirable third unit, with a tendency toward stabilizing the industry. Mr. Mandeville said that Mr. William Levis was strongly in favor of the creation of such a combine." My question, sir, is whether the statement attributed to you, subparagraph d of paragraph 9, is substantially accurate?

A. No. That is the first time I saw it. I knew of a lot of other things but I never knew of Thatcher merging with Hocking. That was one of the combinations that I did not think was practical because of the personalities involved.

Q. Do you dispute the statement set forth there?

A. Definitely.

Q. You say it is absolutely untrue?

A. It is untrue that I said it.

Q. It is untrue that you said it?

A. To the best of my recollection, it is.

Q. Now, were you kept informed from time to time as to what was going on in connection with the Monongah situation?

A. What years?

Q. 1931?

A. I testified the other day Mr. Carter in those years was putting those long reports on my desk like hand bills and I didn't have time to read them because I was worried [fol. 4130] about the other phase of the business. If you will refresh my recollection with the memorandum I will do my best.

Q. I will show you Government's Exhibit 276, which purports to be a memorandum dated May 26th, 1931, addressed to you by Mr. Carter in which he sets forth various interviews the Hartford people had been having with others in connection with the Monongah situation, and ask you whether that memorandum was not brought to your attention?

A. May I take the time to read it, sir?

Q. Certainly.

A. (Witness reads letter to himself.) I remember the situation generally, sir, but I don't remember it specifically. I don't deny that it occurred.

Q. You don't deny you received that memorandum?

A. No.

Q. Will you give the same anwser to Government's Exhibit 286, which is a letter addressed to you dated June 11th, 1931, by Mr. Carter?

A. I don't deny receiving the letter, sir, but I don't recall that I knew of Porter's, and had I recalled that it would have been something new to me. I knew of the Hart Glass Company and the Lynch Ten machine. I don't recall those various instances.

Q. Do you want to say anything else?

A. No.

Q. You testified the other day about your personal ac- [fol. 4131] quaintanceship with the Obear-Nester people. You knew, did you not, in 1932 Hartford were suing Obear-Nester on the ground they were using Hartford feeders that infringed?

A. I don't know just the years.

Q. You knew, did you not, after the July 1st, 1932, agreement Obear-Nester was one of the companies that refused to come in the fold, to use the expression used by some of the parties as indicated by the correspondence in this case?

A. I knew they were one of the companies operating without a Hartford license.

Q. And they still are, aren't they, sir?

A. Yes.

Q. Weren't you consulted by the Hartford-Empire people in an effort to bring about a settlement with Obear-Nester, or the alternative, have somebody acquire Obear-Nester?

A. They may have talked about that but still they are not licensees and they are still a small company that no one has consolidated with, so if you will refresh my recollection as to any of the trading talk that went on over that ten or twelve years, I would be glad to tell you whether I heard of it or not.

Q. My question is a little more specific. Isn't it a fact the Hartford people, and more specifically Mr. Goodwin-Smith, talked to you about an effort to get Obear-Nester to come in either through a Hartford settlement or perhaps [fol. 4132] let's say have Capstan acquire Obear-Nester?

A. I don't recall but I think frequently others talked to me about that.

Q. About getting Obear-Nester to settle?

A. Yes.

Q. Or as an alternative to get Obear-Nester to come in as a subsidiary of one of the licensees?

A. Even Ben Nester talked to me about that.

Q. I understand that, but they never became a licensee?

A. I don't think it did.

Q. In an effort to get Obear-Nester to become a subsidiary of Capstan you even went to St. Louis and conferred with Obear-Nester about it in December, 1932?

A. Not for that purpose.

Q. You went down there and talked with the Obear-Nester people?

A. Frequently. I lived in Alton for fourteen years. My home was there for seven or eight years after I came here. I often went to St. Louis.

Q. My question was whether you were in St. Louis and talked to the Obear-Nester people in December, 1932, in an effort to get them to become a subsidiary of Capstan?

A. I can't remember I was there on that specific date, but if you have anything to refresh my recollection I would be glad to testify on it.

Q. I will show you Government's Exhibit 813, memorandum by Mr. Rieman to Anchor, and also Government's Ex- [fol. 4133] hibit 814, and ask you whether you talked to

the Obear-Nester people some time in those dates as indicated by that exhibit?

A. I don't remember that incident.

Q. Now isn't it a fact that some time in 1933 you had a long talk with Mr. Nester in an effort to get him to come in as a Hartford licensee?

A. I probably did from time to time. I knew him very well.

Q. Isn't it a fact you told Mr. Nester that Mr. Nester was crazy not to get under Hartford's umbrella by taking a license from Hartford?

A. I never told Mr. Nester he was crazy at any time, but I told him I thought he would do better by having Hartford equipment reduce his costs.

Q. I show you Government's Exhibit 590, dated June 16, 1933, addressed to Mr. William H. Curtiss, vice-president Corning Glass Works, Corning, New York, written by F. Goodwin Smith, the third paragraph, "Young Nester had a long conference with Levis the other day, in which conference, as I understand it, Levis told Nester he was simply crazy not to get under Hartford's umbrella by taking a license from Hartford, thereby using the best equipment, and thereby assuring his company of greater profits". My question is whether you did not report to Mr. F. Goodwin Smith in substance what he sets forth in this paragraph?

[fol. 4134] A. I do not deny I said that in substance, but I did not say Mr. Nester was crazy.

Q. You used words, did you not, which formed the basis for Mr. F. Goodwin Smith making that statement?

Mr. Middleton: I object.

The Court: Overruled.

A. Generally I thought Obear-Nester would be better off if they used Hartford equipment, and I probably told young Mr. Nester that.

Q. Then, sir, in 1934 you wrote to Mr. Rieman again as shown by Government's Exhibit 815, dated July 27, 1934, from you to Mr. Rieman, and Government's Exhibit 816, dated August 2, 1934, from you to Mr. Rieman?

A. In connection with—yes.

Mr. Isseks: I offer in evidence at this time Government's Exhibit 851, letter dated November 1, 1934, written by the

witness to H. C. Mandeville, stipulated by Hazel-Atlas as genuine. I offer it in evidence.

The Court: It may be admitted.

Thereupon, Government's Exhibit 851 was read to the Court by Mr. Apsey, of counsel for the government.

Q. Mr. Levis, you wrote that, did you not, sir?

A. Yes.

Q. You sent a copy of the letter to Mr. McNash?

A. Yes.

Q. What, according to your understanding, was Mr. Mc-
[fol. 4135] Nash's interest in the subject matter of a sale of and your interest of General Glass Company?

A. I would not know unless Mr. McNash shared to some degree the same feeling that I did, to get another one or two or ten large companies in the industry was a good thing in the industry?

Q. Did he, sir?

A. I couldn't say that.

Q. You wrote the letter and sent a copy to him, and I am asking why you did it?

A. I stated here, if you let me answer——

(Question read.)

Q. You haven't answered the question yet, sir. If I may be so bold as to suggest it, you haven't yet told why you sent a copy to McNash. You said you would not know unless he felt the same way you did. Did he feel that way at that time?

A. I answered I don't know whether he did or not.

Q. Can you give me any reason?

A. I probably talked with him about the subject and I talked with him about many subjects of this kind, and I thought he ought to be informed.

Q. Because you had, through Illinois Glass Company, a stock interest in his company?

A. Oh, no necessity, no.

Q. Was it because you had through Illinois Glass Company a stock interest in the Thatcher Manufacturing Company?

[fol. 4136] A. I don't know whether we had it then or not.

Q. In 1934, sir, you did not?

A. I don't know. It is a matter of record.

Q. Did you talk to Mr. McNash and Mr. Mandeville as indicated in the next to the last paragraph of your letter?

A. Yes. The whole thing, as I recall it, was that we came up to a period then in 1934—it must have been about 1935 when the Illinois Glass Company's agreement not to go into the glass container business was expiring. This might have been one of the preambles. There was some thought of the Illinois Glass Company again going into the glass container business, and it being the company around which this whole thing might revolve. I don't know whether this particular letter was a forerunner, but that was just one of those things that we talked about. That started way back in 1929 on the Mandeville letters. Today we got the 1936 letter, Government's Exhibit 835, in which Mr. Mandeville states we have so much idle money in Thatcher that it worries me. Having the money does not worry me but having it lie idle and earn nothing is on my mind all the while, and I would like to join with you and see whether I could not go into some business with you. Now, these letters are all along that line, Mr. Isseks, and I will take each one with you and identify them, and I will say that I wrote them. But still it is the same Obear-Nester Company. [fol. 4137] The Illinois Glass Company did not go back into the bottle business and it is liquidated. There is nothing mysterious about that from a practical point of view. It is just like a lot of people who were not interested in horse racing and baseball games talking to each other about things they were interested in that never happened.

Q. Namely, a combination of the glass industry?

A. Yes.

Q. For the purpose of stabilizing the industry?

A. No. For the purpose of lowering costs in which we might get glass container competition.

Q. Do you want to now withdraw your statement that one of the reasons was for stabilizing of the industry?

Mr. Middleton: May I ask the government to define the word "stabilizing"?

The Court: Objection will be overruled.

(Question read.)

A. At no time, no. I was always looking for stability.

The Court: I think you may suspend at this time. The bailiff may recess court for fifteen minutes.

(Recess 15 minutes.)

Mr. Isseks: Your Honor, at this time I offer as Government's Exhibit 852 a letter dated October 30, 1935, written to Mr. R. H. Levis by the witness, stipulated as genuine by the witness's counsel.

[fol. 4138] Mr. Emery: I would like to object to any statements contained in the letter referring to the Thatcher Manufacturing Company.

Mr. Isseks: May I point out the direct statements made to the witness by Mr. Mandeville; I submit they are admissible for all purposes.

The Court: Objection will be overruled. It may be admitted.

(Thereupon Government's Exhibit 852 was read to the Court by Mr. Kramer.)

Q. Did you write that letter, sir.
A. Yes, sir.

Mr. Isseks: At this time I offer as Government's Exhibit 853 letter dated November 1, 1935, written to Mr. R. H. Levis by the witness, stipulated as genuine also.

Mr. Emery: I make the same objection, Your Honor.

The Court: It will be overruled. It may be admitted.

(Thereupon Government's Exhibit 853 was read to the Court by Mr. Apsey.)

The Witness: That should be, "You will have a chance to think about that matter".

Q. Did you write that letter, sir?
A. Yes.

Mr. Isseks: At this time I offer in evidence Government's Exhibit 854, letter dated April 2, 1936, written by the wit-[fol. 4139] ness to Mr. I. R. Stewart, Anchor Cap & Closure Corporation, stipulated genuine by Anchor Hocking at page 6 of the stipulation.

The Court: It may be admitted.

(Thereupon, Government's Exhibit 854 was read to the Court by Mr. Shields.)

Q. Did you write that letter, sir?
A. Yes.

Q. I am directing your attention to the second full paragraph. You say, "I discussed this with him and all of the phases of the industry, including the probably discount of his business, due to the fact he had some contested litigation with Hartford, and that any company which is trying to stay within its allotted position in the industry", what did you have in mind with the company's allotted position in the industry?

A. Richard Moss was a young fellow who was Mr. Joe Nester's grand-daughter's husband, and he was not particularly in the bottle business. He was an investment banker in St. Louis. He is the same Richard Moss who spends his summers at Charlevoix, and about whom I wrote to Rieman. I talked to him in pretty much of an elementary way, father and son kind of talk, and maybe used those words. I don't know what I particularly meant by them because there was no particular understanding or agreement regarding any allotted agreement in the industry, and even in the NRA days, when it was, it did not work.

[fol. 4140] Q. You wrote this to Mr. I. R. Stewart, who is dead now?

A. He is not dead that I know of.

Q. I am sorry. I was told that. I don't want to speak ill of anyone. You wrote this letter. You told Mr. Moss any company who is trying to stay within its allotted position could not acquire your company; what did you mean?

A. I probably meant Obear-Nester Company were probably making more bottles than they could sell, or might have been taking more business than they could make, and if anyone bought them they would have to give up some of that kind of business because they could not operate on that kind of a basis.

Mr. Isseks: At this time I offer as the next government's exhibit, 855, photostatic copy of a letter dated April 2nd, 1936, written to Mr. I. R. Stewart, signed by the witness, stipulated as genuine by Anchor Hocking at page 6 of the stipulation.

The Court: It may be admitted.

(Thereupon, Government's Exhibit 855 was read to the Court by Mr. Apsey.)

Q. Did you write that letter, sir?

A. Yes.

Q. I direct your attention to reference to your associates. Who do you have reference to,—gentlemen and companies named in the letters, namely, Illinois Glass Company?

A. There may have been others. There was mention at [fol. 4141] that time of the Anchor Cap Closure Corporation, I think was its listed name, needing some money, and the Illinois Glass Company and certain others were considering of making an investment of a million dollars in that company for some of its shares about that time.

Q. Did you make the investment?

A. No.

Q. It never materialized?

A. Never.

Mr. Isseks: At this time, Your Honor, I offer in evidence as the next government's Exhibit 856, letter dated June 26, 1936, written to Mr. H. J. Carr, Anchor Cap Closure Corporation, signed by the witness and stipulated as genuine by Anchor Hocking at page 7 of the Stipulation.

The Court: It may be admitted.

(Thereupon, Government's Exhibit 856 was read to the Court by Mr. Shields.)

[fol. 4142] Q. Did you write that letter, sir?

A. I don't deny that I wrote it. I don't recall the letter. And that should be "Doc",—Dr. Carr,—instead of "Doo".

Q. I see, they have it wrong on the photostated original. You wrote the letter?

A. I don't deny writing it, but I don't recall it.

Q. What was the subject-matter at the proposed conference at which Mr. Stewart was going to be present?

A. I don't think the conference was ever held.

Q. What was the proposed conference about you were going to have?

A. Representatives of Anchor Cap, Mr. Stewart and Mr. Carr, and from Hazel-Atlas.

Q. Mr. Stewart and Mr. Carr were from Anchor Cap?

A. Yes.

Q. And the Armstrongs——

A. They were from Armstrong Cork Company.

Q. Of course you were going to be there for the Owens-Illinois?

A. It might have been about conditions in the closure industry, which were certainly very bad.

Q. It might have been about conditions in the glass container industry?

A. No; Armstrong at that time was not identified with the glass container industry; they only made caps.

Mr. Isseks: At this time I offer Government's Exhibit 857, reply to that letter of Mr. Carr to the witness, stipu-[fol. 4143] lated as genuine by Anchor-Hocking at page 7 of the stipulation.

The Court: It may be admitted.

Mr. Fuller: If the Court please, I am assuming this evidence is going in under the reservation as to Capstan I made the other day, the objection, I mean.

The Court: As to relevancy?

Mr. Fuller: Yes, and as to competency.

(Government's Exhibit 857 read by Mr. Apsey.)

Q. You received that letter, did you not?

A. Yes, sir. It further refreshes my recollection that Mr. Carr had nothing to do with the bottle business, and Mr. Stewart didn't. I don't think it had anything to do with other than closures.

Mr. Isseks: At this time I offer Government's Exhibit 858, the witness' reply, namely a letter dated July 1, 1936, being addressed to Mr. Carr, signed "Bill", stipulated as genuine by Anchor-Hocking at page 1 of the stipulation.

The Court: It may be admitted.

(Government's Exhibit 858 read by Mr. Apsey.)

Q. Did you write that letter?

A. As far as I know; I don't recall it specifically.

Mr. Isseks: At this time I offer as Government's Exhibit 859, a letter dated May 24, 1937, written to Mr. I. R. Stewart, signed by the witness, and stipulated as genuine by Anchor-Hocking at page 8 of the stipulation.

[fol. 4144] The Court: It may be admitted.

(Government's Exhibit 859 read by Mr. Kramer.)

Q. You wrote that letter, did you not?

A. Yes, sir.

Q. That was the beginning of the negotiations which ultimately resulted in Anchor-Hocking Corporation?

A. It was one of the early conferences.

Q. How did that entire matter come about?

A. As I have testified in connection with the other matter, I had been trying to make an investment in the Anchor Cap & Closure Corporation, which investment never materialized, and through that and the Continental Can merger with Owens-Illinois in 1929, I had known a number of people; Mr. I. J. Collins, a friend of mine didn't know them, and I arranged a meeting to introduce them to him, and my last paragraph, which seems so mysterious, was my request to Ike to have his figures along, because he usually forgot things like that.

Q. You mean Mr. Stewart?

A. No, Ike Collins.

Q. In connection with this negotiation, what was the proposal made from you to the Anchor Cap & Closure Company, from the Illinois Glass Company?

A. None at all. We had pending at that time a commitment to purchase this 1,125,000 common shares in the Hocking Corporation, and while that commitment was pending, it was only verbal,—I was in New York one day and found [fol. 4145] at the Biltmore Hotel, Mr. I. J. Collins and Mr. I. R. Stewart talking, and this developed to where I knew Mr. I. R. Stewart's associates and Mr. Collins didn't, and while I was downtown on the whiskey business, attending a board of directors' meeting, I slipped over to Stone, Webster & Blodgett's office and introduced Ike Collins to the group, and went on about the later appointment I had that same afternoon.

Q. Was it stated at the time that Illinois Glass Company was going to participate to the tune of $1,125,000?

A. It wasn't a matter of any confidential nature, and Mr. Collins stated he didn't object to it. It may or may not have been; I have no recollection, and don't deny that it was or wasn't.

Q. At that time there was a gentleman on your board of directors by the name of Francis H. McAdoo?

A. Francis H. McAdoo was on the Owens-Illinois board of directors.

Q. Was he also on the Illinois Glass Company board of directors?

A. No, sir.

Q. And he was connected with the Allied Chemical & Dye Company?

A. Yes, sir.

Q. Were you in any way interested in getting the Allied Chemical & Dye Company to put up the other $1,125,000 necessary to put up in the transaction?

A. Well, Allied Chemical & Die happened to have some [fol. 4146] money then and Illinois Glass Company happened to have the theory of either going into the glass business or making some other investment, and Allied Chemical & Dye bought the Illinois Glass Company shares, which gave them the money with which to make the investment.

Q. And that made two million and a half?

A. It was all put up by Allied Chemical & Dye. They bought some Illinois shares for $1,125,000, and Illinois Glass Company took it and bought the shares in Hocking Glass Company.

Q. See if I can get it straight. The two companies paid out the $2,250,000?

A. That was the proceeds received from the sale of Illinois Glass Company shares to Allied Chemical & Dye Company.

Q. In addition, Allied Chemical & Dye put up $1,125,000?

A. In addition Allied Chemical & Dye made an investment in the Hocking Glass Company, which I remember to be an amount equal to the amount of the Illinois Glass Company.

Q. My question was whether you were interested in getting Allied Chemical and Dye Company to make it?

A. I may have. We talked about the whole theory of investment.

Q. And he was on your board of directors?

A. Mr. McAdoo was on the board of directors of the Owens-Illinois Glass Company. He was not on the Allied Chemical & Dye Company's board of directors that I know of. And my talking about the Allied Chemical & Dye Company making the investment was with others in the com- [fol. 4147] pany, not with McAdoo. He didn't handle things of that kind. I think Mr. Atherton, president of Allied Chemical & Dye Company.

Q. You initiated the negotiations; you suggested the Allied Chemical put up the $1,125,000?

A. No, way back in 1929 Allied Dye had bought in the Illinois; they bought the original shares of Hazel that Illinois didn't, at the time of the Dollar Savings Bank cor-

respondence, about which you put something into the record.

Q. It was your suggestion back in 1929?

A. No, it was their suggestion.

Q. Would you say the participation in 1937 of Allied Chemical & Dye Company was not at your suggestion?

A. No, I would say it was a suggestion resulting from discussion as early as the summer of 1929, in which Illinois, as an investment trust, and Allied Chemical & Dye as an investment trust, made joint commitments themselves, which is another thing. We may have talked with them; they may have talked with us; I don't know who wanted to make the investment. It sounds more like they did, because we didn't have the money to make it and they bought the Illinois shares and gave us the money to make it.

Q. Who talked first about the necessity of wanting two and a quarter million dollars?

A. There never was any necessity.

Q. They wanted two and a quarter million dollars?

A. No, they didn't. I testified there were three partners, three interests in Hocking. They each wanted, roughly, [fol. 4148] 30,000 shares, and they were willing for us to be a partner in it. My recollection is at that time they had over a million dollars in the till.

Q. Who first suggested to you from the Hocking Glass Company they would like to have Illinois Glass, or anyone connected with it, purchase stock of a value of $2,250,000?

A. Mr. Tom Fulton talked to me about it.

Q. He was treasurer of Hocking?

A. At that time, yes.

Q. That was the first indication to you of the fact they wanted to sell some of their stock?

A. That was the first indication I knew Tom Fulton, as an individual, would like to have the Illinois Company group as a partner in his business.

Q. And you say the matter initiated with the Hocking Glass people?

A. No; take the letter that went in the record this morning that I wrote to Mr. Mandeville, and sent the mysterious copy to Mr. McNash, so that the letter was located in his file,—Mr. Collins told me that he would like to have had the Hocking Company a part of the Owen-Illinois picture, and I stated in that letter that he decided his associates didn't want to be a partner with Owens-Illinois, and much

to my surprise, after he bought the Thatcher interest in General, which I had negotiated for on behalf of Illinois Glass Company, who were considering going into the bottle business again,—but never did go into it,—I thought that it [fol. 4149] was strange that his associate, who didn't want to be a partner with the Owens-Illinois, should have come and importuned with me to cause Illinois to buy a stock interest in Hocking, but it was Mr. Fulton who came to me about it.

Q. Don't you remember Mr. I. J. Collins came to you?

A. Not in connection with the Hocking purchase.

Q. You are sure of that?

A. I am quite sure of that.

Q. I show you what purports to be proof of an affidavit written by Mr. I. J. Collins, and direct your attention to a paragraph at the point marked with a pencil.

A. May I read it?

Q. I ask you whether it does not refresh your recollection that Hocking was in need of funds to expand, and the writer of the draft affidavit——

A. May I read it?

Q. Wait till I finish the question. I ask you whether Mr. Collins didn't come to you and ask you whether you would not like to invest some money in the Hocking Glass Company?

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[fol. 4150] The Witness: I didn't say he didn't talk to me. He was the one who really handled it. Tom Fulton was the [fol. 4151] one who came up to see me, made the suggestion, and probably a week after that Mr. Collins might have come.

Q. In any event you did make a commitment at that time on behalf of Illinois Glass Company, of which you were president, in the amount of $1,125,000?

A. Well, it was a little more than that, sir. It was something that was talked about, and then the Illinois arranged for the sale of their shares to Allied Chemical & Dye, and they had to have a waiver of rights of shareholders, and we went through a lot of trouble to be sure I had the money before I made the commitment. After I had the money, either as to that investment or other investments, the directors of the Illinois Company had to determine. I personally made that commitment, which certainly those gentle-

men would never have held me to if it was embarrassing to proceed with it.

Q. Is it a fair statement you, on behalf of Illinois, made the original commitment of $1,125,000 and then arranged the mechanics?

A. No, I always disclosed to them who my partners were, and my people weren't fussy about the contract. The Allied Chemical & Dye being a big listed company, I had to watch my step as to each paragraph of the transaction, so I didn't come out with a contract that would have been embarrassing to Allied.

Q. Let me ask you if this is a fair statement, that you told either Mr. Fulton or Mr. I. J. Collins that you would get the two and a quarter million dollars which they asked [fol. 4152] you for?

A. They were very fussy to know who my partner was. There was some question as to the desirability of taking such an amount; they didn't even want 110,000 shares outstanding, they wanted an even 100,000.

Q. Is it a fair statement that you were syndicate manager and arranged for the two and a quarter million dollar financing?

A. No, sir; I was fiduciary for the Illinois Glass Company.

Q. You arranged for Illinois Glass Company to buy 15,000 shares for $1,125,000?

A. There were 75,000 shares—37,000 shares involved, whatever the final figure is.

Q. You arranged the whole thing with Mr. Collins and Mr. Fulton?

A. No, sir, they knew at all times who my partners were. I think in some of the discussions the rights of those partners were changed.

Q. You were the man they were dealing with primarily; is that a fair statement?

A. I was there more than anybody else, if that answers it.

Q. They were looking to you in their dealings, weren't they?

A. No, I wouldn't have been worth anything in the deal if I hadn't had some monied people behind me.

Q. Were you negotiating on behalf of your interests and your partners in the Illinois Glass Company?

[fol. 4153] A. No, the directors of the investment trust of which I was president.

Q. You were negotiating——

A. I was negotiating, yes, but I never took any steps without clearing it back to the Illinois Glass Company.

Q. You were also dealing with Mr. Atherton?

A. With Mr. Atherton or the treasurer, I don't remember his name.

(Previous questions and answers read at the request of Mr. Middleton.)

Mr. Isseks: At this time I offer as the next Government's Exhibit 860, letter dated June 4, 1937, written by the witness to I. R. Stewart, stipulated as genuine by Anchor-Hocking at page 8 of the stipulation. I do not offer the handwriting until we get Mr. Collins on the stand, or someone else who is connected with the Anchor-Hocking. I may never offer it.

The Court: It may be admitted.

(Government's Exhibit 860 read by Mr. Apsey.)

Q. Did you write that letter, sir?

A. Yes, sir.

Q. Do you remember the exact date of the commitment made by Illinois Glass Company to Allied Chemical & Dye Company; do you have a record with you? If I suggested it was December 12, 1937, does that in any way refresh your recollection?

A. No, it would not. I don't know that I could even find it. I am trying to think where I could get a copy.

[fol. 4154] Q. I show you a document which purports to be dated December 12, 1937, addressed to Illinois Glass Company by Hocking, not signed, apparently accepted by Illinois Glass Company president, but not signed; does that refresh your recollection?

A. It was sometime around this, in the fall of 1937. If I can get you a correct date, my statement is subject to that.

Q. No, I am satisfied. In the fall of 1937.

Mr. Fuller: Was the question when the commitment was signed?

Mr. Isseks: That is right.

At this time I offer as Government's Exhibit 861, letter dated August 18, 1937, written by the witness to R. H. Levis, stipulated as genuine by his counsel.

The Court: It may be admitted.

(Government's Exhibit 861 read by Mr. Apsey.)

Mr. Middleton: May it be understood this is received subject to our objection on account of irrelevance?

The Court: Yes.

Q. Did you write that letter, sir?

A. Yes. But in accordance with my understanding the other day, I will stipulate I didn't send a copy to all the directors, as it states.

Q. Did you ever purchase any of Mr. Collins' stock interest in Hartford-Empire Company?

A. Neither personally or for any company in which I was interested.

[fol. 4155] Q. The Illinois Glass Company never did?

A. No, sir.

Q. Owens-Illinois never did?

A. No, sir.

Q. You did talk about it to Mr. Collins, as indicated?

A. I was continually busy ferreting out pieces of business my company might want. Some of them my company took, some they didn't take. This they didn't take.

Q. Shortly after Illinois Glass took an interest in Hocking Company, did Mr. Collins become interested in Illinois Glass Company?

A. Mr. I. J. Collins bought some Illinois Glass Company shares from me personally.

Q. That was done in the early part of 1938?

A. Yes.

Q. 700 shares?

A. He was going to take a thousand shares, and for some reason I don't know of, he only took 700.

Q. I. J. Collins was a stockholder in Illinois Glass Company from sometime in January, 1938, until its dissolution in September in——

A. Yes, he was one of those who participated in the dissolution.

Q. What were the circumstances under which Mr. I. J. Collins told you he would buy a thousand shares of Illinois Glass Company stock and finally only took 700 shares?

A. I probably needed some money and he had some, and I was willing to sell my stock, and sold it to him.

[fol. 4156] Q. You say this based on your recollection?

A. Definitely. All these big transactions didn't turn out so profitable. Sometimes you ran out of soap.

Q. At this time I show you Government's Exhibit 667, which is a letter dated August 9, 1929, written to Mr. El-

dred, signed by Mr. Carter, and I direct your attention to the fourth full paragraph where Mr. Carter says:

"Mr. Levis wishes it to be understood that this company" (referring to Illinois Glass Company) "welcomes any reasonable competition and is anxious to avoid placing or maintaining any obstacles in the way of legitimate glass manufacturers. He is, however, in hopes that the Laurens Company will not fail to recognize the somewhat demoralized state of the industry under present conditions and that with manufacturing capacity so far in excess of present demands, increases in operation are likely to work out disastrously, if not kept within the reasonable bounds suggested by the Glass Container Association."

I ask you whether the statement attributed to you by Mr. Carter in that letter is substantially in accordance with your recollection of what you told him?

A. I cannot affirm it or deny it. It was in accordance with my recollection. I think I have seen the same general words in several letters that were early exhibits in this case.

[fol. 4157] Q. In 1929, when the NRA was not in existence, what was your understanding the "reasonable bounds" suggested by the Glass Container Association?

A. I wouldn't know what I suggested as the reasonable bounds in 1929, but it was something, I guess, we always talked about; nothing was ever done about it; as far as I know I have never agreed to stay within any bounds or have never asked anyone else to agree to stay within any bounds.

Q. When you first came with Owens-Illinois, you were acquainted with Section 22 of the original contract?

A. Yes, sir.

Q. What was the understanding of what Section 22 meant insofar as it applied to your company at that time?

A. Well, my recollection was in the April, 1924, contract, Mr. M. J. Owens, who was quite a rugged individualist, wanted to have some control over who it was that used his patents, and that he finally centered upon the words "legitimate glass manufacturer", and anyone who was "legitimate" could use them, and if they weren't "legitimate" he had something to say about it. But I have never seen any instances where any curtailment of granting a license or not granting a license became effective, and in 1929 when

I came up here with a lot of other problems, I found some people had called about this, and were talking about that question, and to get it out of the way I told Mr. Williams as far as I was concerned let's cancel it, and they cancelled it.

[fol. 4158] Q. That was February 9, 1931?

A. February 2, 1931.

Q. Now, before that cancellation agreement,—which is Government's Exhibit 411 in this case,—didn't you have various conferences with various executives in your company with regard to that?

A. I may have, yes, sir.

Q. Don't you remember you were told Mr. Goodwin Smith and Mr. Lloyd Williams felt there was danger from the United States Government in reference to this veto section?

A. I never considered there was any governmental difficulty.

Q. Weren't you told that by various people?

A. It might have been one of the arguments, but there was no proposition or no element of fear to cause me to be willing to cancel it.

Q. I call your attention to Government's Exhibit 665 and direct your attention to the third paragraph from the last, where Mr. Carter states:

"Mr. Knox Smith and Mr. Lloyd Williams have always felt there was danger from Washington in this veto section. It was originally put in over their opposition by the insistence of Mr. Owens and more recently they have urged its cancellation but were not able to persuade Mr. Boshart that it was wise."

I ask you whether it wasn't a fact that was called to your attention on May 10, 1929?

A. It may have been called to my attention. I neither affirm it nor deny it. It had nothing to do with my position.

The Court: You may suspend at that point.

(Noon recess taken.)

[fol. 4159] April 21, 1941, 2:00 P. M.

(Direct Examination of Mr. William E. Levis resumed by Mr. Isseks:)

Q. Did I understand you to say, Mr. Levis, before close of the examination this morning that the opinion you received from counsel had nothing to do with your position regarding the cancellation of Section 22?

A. I don't recall that I said it had nothing to do.

Mr. Middleton: I object to the question. It is a misstatement of what the witness said.

Mr. Isseks: I had transcribed for my benefit the last question and answer: "Question: I call your attention to Government's Exhibit 665, and direct your attention to the third paragraph from the last, where Mr. Carter says, 'Mr. Goodwin Smith and Mr. Lloyd Williams have always felt that there was danger from Washington in this veto section. It was originally put in over their opposition by the insistence of Mr. Owens, and more recently they have urged its cancellation, but were not able to persuade Mr. Boshart that it was wise.' I ask you whether it wasn't a fact what was called to your attention May 10, 1929?" That is what the stenographer got. Was he wrong? It wasn't this gentleman,—I had to go up and get the transcription. Also these two questions, "Question: Don't you remember you were told Mr. Goodwin Smith and Mr. Lloyd Williams felt there was danger from the United States government in reference to this veto section? Answer: I never considered [fol. 4160] there was any governmental difficulty. Question: Weren't you told that by various people? Answer: It might have been one of the arguments, but there was no proposition or no element of fear to cause me to be willing to cancel it."

A. I am willing to accept those two answers.

Q. In other words, the opinion of counsel did not affect your position in any way, or am I overstating it?

A. I think you are overstating it. I think the two answers speak for the record.

Q. The last answer is, "It may have been called to my attention, I neither affirm it or deny it. It had nothing to do with my position". Do you want that to stand?

A. Yes.

Q. I call your attention to Government's Exhibit 409, a memorandum to you from Mr. Carter dated December 13, 1930, subject: "Section 22, General License Agreement with Hartford". It begins, "The following is by way of comment upon the insistence of Hartford-Empire management

on the desirability of cancelling Section 22 of the General License Agreement of April 9, 1924, entered into between Hartford-Empire Company on the one hand and the Owens Bottle Company on the other. Mr. Williams has sent me copy of his letter to you of December 9 on this subject, giving the legal reasons why he believes, with Hartford, that this section should be cancelled. These are based [fol. 4161] mostly on his consideration of the Sherman and Clayton Acts, and the possible effect of the Dill Bill, if that measure, which has already passed the Senate, should become a law. I understand that the conclusions reached by Mr. Williams in this connection are substantially those heretofore reached by Herbert Knox Smith, general counsel for the Hartford-Empire Company." Does that refresh your recollection your counsel was of the opinion you might be in difficulty under your 1924 contract by reason of Section 22?

Mr. Middleton: I object. What significance in this trial is this prolonged discussion of whether or not Section 22 was taken out of the contract ten years ago because the lawyers might have thought there was some question as to its legality? This is a proceeding to enjoin present practices. Now that is out ten years ago, and I just object to the examination as to the reasons why it was taken out. Suppose it was, in the opinion of counsel, illegal to have it in. It was taken out ten years ago, and certainly cannot be any issue in this case.

The Court: We discussed this matter before at the inception of the trial. The Court then was of the opinion these matters are proper to go into, looking upon the question of present events.

Mr. Middleton: It is limited then, Your Honor, in the mind of the Court to the question of whether or not there [fol. 4162] is today an extending agreement that perpetuates Section 22?

The Court: The Court does not know. There may be.

Mr. Middleton: And unless there is today such agreement then this evidence is irrelevant theoretically?

The Court: No, the Court would not commit himself to that. The Court is entitled to the entire history of this matter; not just an exposition of the situation as it may exist today, but the entire history in order to show the effect today.

Mr. Middleton: I submit to Your Honor again there is certainly nothing which can be enjoined based upon an agreement which was cancelled some ten years ago, and I wish to keep that in the mind of the Court as the position of the defendants in this case.

The Court: Very well.

Q. My question is, directing your attention to those two paragraphs, whether it does refresh your recollection you were told by your counsel there might be governmental action in view of Section 22 of the contract?

A. I don't know whether I felt it would be proper to cancel Section 22.

Q. Isn't it a fact you asked for such an opinion?

A. I may have. I do not deny or affirm it.

Q. I show you a document which I am going to have [fol. 4163] marked as Government's Exhibit 862, copy of an opinion written by Mr. Williams. It is dated December 9, 1939, written to the witness, signed by Mr. Williams.

Mr. Middleton: This is not any of the documents on the list that was given to us.

Mr. Isseks: That is true. We did not intend to use it.

Mr. Middleton: We would like to have an objection to this on the ground it is privileged.

Mr. Isseks: We assume that and we are not asking Your Honor to rule on it in view of your previous ruling.

Q. I show you Government's Exhibit 862, marked for identification, and direct your attention to the first paragraph, and ask you whether or not it isn't a fact that you asked Mr. Williams for an opinion with regard to Section 22 of the contract?

A. I think so.

Mr. Isseks: I offer it in evidence. Your Honor will probably defer it in view of your previous ruling. We do not claim this states the facts. Although we take the position any privilege is waived, it is an opinion by counsel which is considered legal. If I may state, the reasons set forth in this memorandum with regard to Section 22 are exactly the same reasons that apply to the '35 contract and the Hazel-Atlas contract.

Q. Directing your attention to Government's Exhibit [fol. 4164] 409, last paragraph on page 2, "The objection

on our part to eliminating Section 22 is the fear that Hartford, once freed of our veto, might be inclined to grant licenses recklessly and without regard to the state of the market or good of the industry. Believe that this fear is much exaggerated. We have been dealing with Hartford under our 1924 agreement for more than six years now, and have never found any tendency on their part to act recklessly or in disregard of basic conditions. Believe we may safely conclude that their attitude in the future will not be different."

The Court: What are you reading from now?

Mr. Isseks: I was reading from Government's Exhibit 409, that is at the bottom of page 2, run over to top of page 3.

The Court: What is the question now?

Mr. Isseks: I hadn't asked the question.

Q. My question is, Mr. Levis, whether Mr. Carter sets forth your views as well as his as to the practical reasons for the desirability of cancelling Section 22?

A. Mr. Isseks, when I came to Toledo in 1929 a group of associates in the Owens-Illinois Glass Company were always talking about matters of this kind. I came in from a business that never had anything to do with matters of this kind, and as I testified, throughout the time that I have been on the stand in this trial one of the first things I wanted to do was to get rid of that phase of the [fol. 4165] business, and whether or not we started out by trying to get the Board convinced we ought to be in the manufacturing business exclusively, and whether we did as the first act the canceling of Section 22, and then subsequent acts that I have testified to, I don't remember. That was the impelling motive; whatever was the opinion of counsel that was the impelling motive. All I remember is I wanted to get out of it, and that was the policy I hoped to conduct our business under.

Q. My question, is the reason of Mr. Carter the practical reason, namely, there was no fear that Hartford was inclined to grant licenses recklessly and without regard to the state of the market or good of the industry,—was that one of the factors taken into account by you?

A. I don't think it was.

Q. It certainly was one of the factors set forth in Mr. Carter's memorandum?

A. That was Mr. Carter's opinion.

Q. He was vice-president?

A. Yes, he was placing them on my desk every day just like hand bills, most of which I did not read.

Q. Did you read that one?

A. I don't recall it but I don't deny it.

Q. Did you write a piece of paper to him saying, "Don't send me any more memoranda"?

A. I was too busy to do that.

[fol. 4166] Q. I call your attention to Government's Exhibit 416 dated November 28, 1932, a year and nine months after this alleged cancellation of Section 22. I direct your attention to the second full paragraph. It says, "Rieman met Mr. Levis in New York about two weeks ago and asked for the right to make beers. Both Mr. Levis and I thought we had convinced Rieman that it was an illogical request for him to make, and that his company had no place in the beer field." I will ask whether Mr. F. Goodwin Smith sets forth in substance the conversation which you had with Mr. Rieman some time shortly prior to November 28, 1932?

A. I don't recall that, but my recollection is I never had any objection to Mr. Rieman making beer bottles.

Q. Do you deny F. Goodwin Smith said in this letter that you tried to convince Rieman that it was an illogical request for him to make beers, and he would be better off if the company was not in the beer business?

A. I neither would deny or affirm. Rieman did get a beer bottle license, and I never had any objection to his having it.

Mr. Isseks: At this time I offer Government's Exhibit 863, a letter written by the witness on January 13th, 1933, to F. Goodwin Smith. It is not stipulated. I am told the witness had previously identified this document as one he wrote.

[fol. 4167] Q. I will ask you now whether you wrote that letter to Mr. F. Goodwin Smith, and to refresh your recollection I show you page 504 of the testimony you gave before the TNEC?

A. I have no occasion to question that I wrote it, sir.

Q. I will ask you to refresh your recollection at page 504 of the TNEC testimony. You said you did write that?

A. Yes.

Mr. Isseks: I offer it in evidence.
The Court: It may be admitted.

(Thereupon, Government's Exhibit 863 was read to the Court by Mr. Kramer.)

Q. In this letter, which was dated almost twenty-four months after the alleged cancellation of Section 22, you state, "I want to keep posted from time to time about people who apply for license for the manufacture of beverage bottles". Were you kept posted, sir?
A. Not specifically, but I always wanted to be kept posted on everything.

Mr. Isseks: At this time I offer in evidence Government's Exhibit 864, memorandum to the witness, dated December 16, 1933, by Mr. Phillipps, who is vice-president and treasurer of Owens-Illinois Glass Company, stipulated as genuine by Owens-Illinois at page 24.
The Court: It may be admitted.

(Thereupon, Government's Exhibit 864 was read to the [fol. 4168] Court by Mr. Shields.)

Q. Did you see that memorandum, sir?
A. Yes.
Q. You saw Messrs. Kalman and Shiely, did you not, thereafter?
A. The Sunday morning he refers to.
Q. Did you see them more than once?
A. Several times.

Mr. Isseks: I offer at this time Government's Exhibit 865, memorandum dated December 18, 1933, to Mr. H. Boeschenstein, copy to Mr. Phillipps, written by the witness, to which is attached memorandum of same date signed by the witness, relating to conference he had with Messrs. Kalman and Shiely. I offer both documents. Both are stipulated as genuine by Owens-Illinois at page 24.
The Court: They may be admitted.

(Thereupon Government's Exhibit 865 was read to the Court by Mr. Apsey.)

Q. Did you write both those memorandums, sir?
A. I think I did.

Q. Directing your attention to the second memorandum, page 2, what was the quart Mason Jar price situation in the Chicago market to which you have reference?

A. I don't recall specifically but I know about that time there were various places where there was what we would class as distress stock. People would produce more than [fol. 4169] they could sell, simply ship a carload or train load of various types of this inventory into a market and it stood there on the siding until they sold it at whatever prices they could get.

Q. You said you had more than one conversation with Messrs. Kalman and Shiely?

A. I arranged some appointments, but the net of the whole thing was Mr. Kalman finally wanted us to become a partner with him in the endeavor and then subsequently applied to us for a job.

Q. Isn't it a fact you told Messrs. Kalman and Shiely if they went in business they would have to sell the products at prices dictated by you?

A. I never did.

Q. Isn't it a fact you told Messrs. Kalman and Shiely if they went into business you would have to have their customers in alternate years?

A. I never did. Here is what I said in connection with that. I said where a business which was pretty large—while small manufacturers could probably sell one customer one year and not sell him again and still stay in business, that we had to have enough good will with the trade and a low enough cost and a low enough selling price, and high enough quality, that we could sell everybody at least every other year, or half of them all the time.

Q. Isn't it a fact that you told Mr. Kalman and Mr. [fol. 4170] Shiely that your company and Hazel-Atlas controlled 66 per cent of all the glass container business, and that you were personally connected through stock interest in Hazel-Atlas Corporation?

A. I may have. I don't deny it nor affirm it.

Q. Now, I direct your attention to a memorandum here of a letter which I am not going to offer. I direct your attention to the third paragraph, and I ask you whether the statements set forth therein by counsel for Messrs. Kalman and Shiely are not substantially what you told Messrs. Kalman and Shiely some time in the latter part of 1933?

Mr. Middleton: We object to that, Your Honor. We have just been handed this paper. We have never seen it before, and it apparently is not being used to refresh the witness's recollection, but he is being examined as to the truth of the statements.

The Court: I think the witness can answer if he knows whether or not he made any such statements.

Q. My question is, if you made statements substantially identical with those in this memorandum?

A. May I have time to read it?

[fol. 4171] A. I didn't make any such statement as that. I never had any such ideas as that.

Mr. Isseks: At this time I offer as Government's Exhibit 866, a carbon copy of an original letter dated July 12, 1934, written to the witness by one A. E. Floan. We expect to call Mr. Floan as a witness. He will identify the copy.

Q. I ask the witness whether he didn't receive the letter? In that connection I show the witness a reply letter dated July 17, 1934, Government's Exhibit 867, written to Mr. Floan by the witness, and I will ask him whether this is his signature on the original letter?

A. Yes, sir.

Q. My next question is whether you received 866 and wrote 867?

A. If I have the right to read them?

Q. Certainly.

A. (After referring to same.) I don't recall definitely receiving the letter. I have no reason to deny receiving it. I do recall having written this letter.

Mr. Isseks: I offer them both in evidence.

The Court: They may be admitted.

(Mr. Apsey thereupon read Government's Exhibits 866 and 867.)

Mr. Isseks: Now, Your Honor, at this time I would like to offer as Government's Exhibit 868, a letter dated August 4, 1934, written to the witness, signed by A. E. Floan.

[fol. 4172] Q. I ask you whether you received it.

A. No question whether I received it.

Mr. Isseks: I also offer as Government's Exhibit 869, the reply, dated August 6, 1934.

Q. Did you write that, sir.
A. Yes, sir.

Mr. Isseks: I offer them both in evidence at this time.
The Court: They may be admitted.

(Government's Exhibits 868 and 869 read by Mr. Kramer.)

Mr. Isseks: At this time I offer as Government's Exhibit 870 a letter dated August 9, 1934, written to the witness, signed by Mr. A. E. Floan.

Q. Did you receive that?
A. I have no right to question having received it, sir.

Mr. Isseks: I offer as Government's Exhibit 871, the witness' reply, dated August 11, 1934.

Q. I will ask you whether that is your signature.
A. It is my signature. I don't think there is any question but what I wrote it, sir.

Mr. Isseks: I offer them both at the same time.
The Court: They may be admitted.

(Government's Exhibits 870 and 871 read by Mr. Apsey.)

Q. Did you have a conference with these gentlemen shortly after Government's Exhibit 871 was written, namely August 11, 1934?
[fol. 4173] A. I don't recall specifically the conference, but I have no right to question but what I did.
Q. You don't remember anything about the details?
A. I remember we talked a lot about it. It got to be quite a bore. They had been to see us repeatedly, but nothing came of it. There is no glass factory there yet, and we have sold our warehouse.
Q. I show you Government's Exhibit 485, which is a letter dated April 16, 1935, addressed to you as president of Owens-Illinois, and I will ask you whether you received that letter in the regular course of business with the attached memorandum?
A. I don't specifically recall the letter but I have no occasion to deny that I received it.
Q. I now show you Government's Exhibit 487, which is a letter written by Mr. Boeschenstein, addressed to Mr. Pease, dated April 22, 1935. Mr. Boeschenstein says:

"Mr. Levis has passed on to me your memorandum relative to the plans of Messrs. Mickle and Haizlip to launch a new glass business. Previous information in regard to this had already come to us."

I direct your attention to that exhibit, and Government's Exhibit 486, and ask you whether the subject-matter of the proposed glass plant by the gentlemen referred to therein was called to your attention approximately about the date of the exhibit, namely, April 20, 1935?

The Court: Is this the same exhibit?

[fol. 4174] Mr. Isseks: No, it is a different one; memorandum on a different date. One is dated April 16th and the other April 20. Same subject-matter, apparently two different memorandums.

The Witness: I don't recall either of the letters, sir. I would imagine it was a matter Mr. Boeschenstein, as the general manager of our company, would have handled, of the Pacific Coast operations, being more or less accorded to him. I don't deny I received it, nor do I recall it.

Q. He says, in Exhibit 487, "Mr. Levis has passed on to me".

A. It would be something I would have passed on to him.

Q. Is there anything you have there you want to put in?

A. No. There is a little——

Q. Anything you want us to put in evidence we will be glad to put in evidence. I hand you Government Exhibit 121, addressed to Mr. Phillipps by Mr. Carter, and referring to a statement made by you it says: "Division of Litigation Expenses with Hartford."

"My understanding of the working agreement in regard to litigation expenses, arrived at yesterday between Mr. Levis and Mr. Goodwin Smith is as follows:

1. As to those litigations which were in active progress prior to July 1, we will continue to divide outside expenses with Hartford as before. As a practical matter, these cases will include only the Obear Nester litigations, in St. [fol. 4175] Louis, "and the Cincinnati cases, in connection with which latter petitions for certiorari in the Supreme Court have been filed or are under consideration.

2. As to all other matters of litigation arising subsequent to July 1, 1932, or which, like the pending suits against Reed and Lamb on the Peiler plunger patent, have not heretofore been actively prosecuted, Hartford will pay all expenses, even though O-I may have some participation in recoveries.

3. Mr. Levis, however, further offers, in case of an actual recovery of substantial amount in which this company participates, to seriously consider any representations that Mr. Smith may see fit to make with regard to the propriety of dividing any expenses, not already divided, incurred since July 1, 1932, in the securing of the recovery in question.

4. Mr. Levis looks to Mr. Smith to personally see to it that his Accounting Department properly distributes Hartford's outside charges between those falling under paragraph 1 and those falling under paragraph 2 above.

5. Our outside expenses Hartford will continue to divide with us on the same basis as heretofore, particularly as to [fol. 4176] the charges of "Whittemore, Hulbert, Whittemore & Belknap (including Krey) and of Milans & Milans, in respect to Patent Office investigations and prosecutions in which our companies are jointly interested."

My question is whether Mr. Carter is setting forth accurately the arrangement made between you and Mr. F. Goodwin Smith?

A. I don't remember the date mentioned. It was something I always complained about, because I thought it was very expensive, we never having had a patent attorney employed in the Illinois Glass Company in its sixty-odd years of business. Mr. Carter is obviously writing the memorandum, believing it would pacify me in connection with my complaint regarding the costs that were involved.

Q. It says right in the beginning, "My understanding of the working agreement in regard to litigation expenses, arrived at yesterday between Mr. Levis and Mr. Goodwin Smith, is as follows"—my question is whether he sets forth what transpired?

A. He set forth his understanding of what I told him transpired.

Q. Is it substantially the arrangement you made with F. Goodwin Smith?

A. I don't recall, sir; I don't deny it.

Q. I now call your attention to Government's Exhibits 290 and 291. 290 purports to be a letter dated February 15, 1936, to W. T. Rawleigh Company, and I will ask you [fol. 4177] whether you wrote that letter?

A. Yes, sir.

Mr. Isseks: I offer it in evidence, Your Honor. Your Honor deferred decision pending the calling of this witness.

The Witness: Do you want to ask me some questions?

Mr. Isseks: I asked you whether you wrote it.

The Witness: Well, I say I wrote it.

Mr. Isseks: That is all.

The Court: It may be admitted.

Mr. Isseks: If I may be permitted, I would like not to read it at this time. I asked the witness whether he wrote Government's Exhibit 291, which is dated February 24, 1936, to Mr. Rawleigh, and in view of the witness' response in the affirmative, I offer that in evidence at this time and will not take the time to read it.

The Court: It may be admitted.

Q. Now, I show you Government's Exhibit 505, which is dated July 15, 1937, written to Mr. Hatch by Mr. Naylor, which says in the second paragraph:

"About the subject-matter discussed" (apparently over the telephone, in the previous sentence) "I find that Mr. Levis has discussed the situation with Mr. Goodwin Smith and they are contemplating expansion in the territory mentioned, but I do not believe any decision has been reached as to when this matter will crystalize." My question is [fol. 4178] whether you recall the subject-matter of the letter, namely, whether your company was contemplating expansion into new territory?

A. No, I don't believe I do. There is nothing that I would be unwilling to state in our expansion program, if you refresh my memory.

Q. Isn't it a fact you learned from Mr. F. Goodwin Smith about this time there was a plan for a license on the part of a company that wished to put up a plant in Texas and your company took the position you were contemplating expanding into the territory?

A. It seems rather early for that to be the item. We

do intend to expand into Texas. We own a plant site at Waco, Texas, and plans for it were completed and were approved at our board meeting the other day when I wasn't there.

Q. My question is whether or not in 1937 it wasn't called to your attention there was somebody trying to get into Texas territory?

A. I don't recall it, but I have no reason why, if it were brought to my attention, I should deny it.

Q. Do you remember in 1935 there was discussion preceding the arrangement that finally resulted in the September 30, 1935, and October 1, 1935, contracts?

A. We had a good many.

Q. Who did you have your discussions with?

A. I would presume with Goodwin Smith and W. J. Belknap and Col. Brown.

[fol. 4179] Q. And on behalf of Owens?

A. Mr. Belknap and myself and Mr. Williams, largely.

Q. Was it called to your attention prior to the negotiations that Capstan was insisting it be advised of the terms of the licenses from Hartford to Owens and from Hartford to Hazel-Atlas, and threatening to bring suit unless the information was given to Capstan?

A. It wasn't specifically called to my attention, I know that was talked about. I have no reason to deny I heard it.

Q. Wasn't that one of the things that precipitated the final agreement in 1935?

A. It may have been one of the items taken into consideration but it wasn't of the same importance as the items I previously testified about.

Q. Wasn't the fact the government had made inquiry with regard to the contracts of Hartford, one of the considerations that brought about the 1935 agreement?

A. I never heard the government had made inquiry regarding that contract.

Q. But you do remember the Capstan claim?

A. I remember the Capstan claim, yes, sir.

Q. Did you learn at the time that Capstan took the position by reason of the favored-nation clause the payments being made to Hazel were in violation of the favored-nation clause?

A. The first time I ever heard of the favored nation clause was when I heard it right in this court room.

Q. You testified you heard about their claim?

[fol. 4180] A. I so testified.

Q. The memorandum of Mr. Williams, Government's Exhibit 567, brought it to your attention; I call your attention to the memorandum, particularly the first paragraph, in which it is stated—it is dated May 21, 1935—first paragraph of which states——

Mr. Middleton: Has that been admitted in evidence?

Mr. Isseks: I understand so.

Q. (Continued):

"Capstan having taken over Salem will be paying about $200,000 royalty per year, and has been very insistent it be fully advised of the terms of the license from Hartford to Owens and from Hartford to Hazel, and is threatening to bring suit unless that information is given, or to cease paying royalties until the information is given."

Was that called to your attention, do you remember?

A. I don't know that this specific memorandum was called to my attention, but as I stated, the subject-matter was one of the matters under consideration.

Q. Did you learn in 1939, after the TNEC, that Anchor-Hocking was taking the position that by reason of the favored nation clause, they had a claim against Hartford?

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[fol. 4181] Q. My question is whether it was called to your attention in 1939 that Anchor-Hocking, by reason of the favored nation clause, was making a claim against Hartford because of the fact Hartford had paid royalties to Hazel-Atlas?

A. I don't recall specifically. I don't deny it; but I do recall since the trial started seeing some letter in that connection.

Q. This is one I haven't shown to you or your counsel so you couldn't have seen this one. I just saw it last night. I now have marked as the next government's exhibit, letter dated May 11, 1939, written to Mr. William Belknap by Mr. Hugh Laughlin.

A. I saw it three or four days ago.

Q. I didn't show it to you.

Mr. Middleton: We object to this.

Q. I show you Government's Exhibit 872 and direct your attention to the first sentence, and ask you whether that does not refresh your recollection that you took the posi-
[fol. 4182] tion in 1939 that you and Mr. C. B. Belknap were willing to explain to Mr. Collins the bearing of the relationship between Owens-Illinois and Hazel on the one hand and the agreements which were entered into in 1932 between Hartford and Hazel-Atlas?

A. Yes. I don't see anything mysterious about that.

Q. I want you to tell us what the relationship was.

A. As nearly as I can see the relationship, if the Anchor-Hocking Glass Corp. had some claims against Hartford in connection with matters of this kind, they might have some claim against us.

Q. What was the explanation you were willing to give personally to Mr. Collins, which would have a bearing upon the relationship between Hartford and Hazel,—what was the explanation except for which they might have a suit against you?

A. If they had a claim against Hartford, it might also run against us, if he wanted to treat a discussion of this thing as confidential, not use our discussion with him against us. I think there were a lot of other things that don't have anything to do with this here.

Q. But there were no factual explanations other than the possible claim?

Mr. Middleton: I object. The letter speaks for itself.

Mr. Isseks: I offer it in evidence.

Mr. Middleton: I object. There is nothing in this to bind Owens.

[fols. 4183-4184] The Court: I have no question about the admissibility of this document to show the state of mind of Mr. Laughlin, the author.

Mr. Isseks: I am sorry. I misspoke myself.

The Court: If it is limited to that purpose only.

Mr. Isseks: Thank you.

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[fol. 4185] Q. Now, Mr. Levis, was it also called to your attention that Mr. Frank C. Ball took the position in December, 1938, that he had never learned until then of the fact that any royalties paid by him to Hartford would be divided with Owens and Hazel-Atlas?

A. I heard him testify to that in the TNEC hearing.
Q. That was the position he took in December, 1939?
A. Yes, sir.

Mr. Middleton: I don't want to be captious. I think the witness is entitled to have the statement presented to him, rather than call for his recollection, and that constituting a hearsay statement, as to what Mr. Ball said.
Mr. Isseks: He volunteered the statement.
Mr. Middleton: It may very well be somebody else has the right to object to what Mr. Ball said.

[fol. 4186] Q. I show you the testimony of Mr. Ball, page 560 of the TNEC hearing, and ask you if that testimony does not conform with your recollection.
A. I have read the testimony and it conforms with my recollection.

Mr. Wall: With the witness' recollection of the testimony.
Mr. Isseks: That is what I mean.

Q. Was it also called to your attention in 1939 that Ball Brothers took the position by reason of this nondisclosure they had a claim against Hartford?
A. I don't recall. It may have been, sir; I don't deny it.

Mr. Isseks: At this time, for the continuity of the record, I would like to put in a letter dated October 9, 1939, written by the defendant, A. M. Bracken, assistant counselor and treasurer of Ball Brothers, to Robson B. Brown, of Hartford-Empire, this also being offered for the limited purpose of showing the state of mind of the Ball Brothers and Mr. Bracken. This was furnished us by Ball Brothers, pursuant to subpena served about three weeks ago during the trial.
Mr. Wall: I understand the offer was for a limited purpose only?
The Court: That is all. It may be admitted for that purpose.

(Government's Exhibit 873 read by Mr. Apsey.)

Q. Since you have been with your company, has your [fol. 4187] company granted any license to anyone in connection with this automatic machinery?
A. Only those to Hazel; the Hazel '32 and '35 licenses.

Q. And Hartford, so far as you can, on feeder equipment?

A. Yes.

Mr. Isseks: At this time I would like to offer two exhibits, one, Government's Exhibit 874, letter dated September 10, 1934, written to Sparks Construction Company, signed by Mr. Martin, assistant secretary, stipulated as genuine by Owens; and the next one, Government's Exhibit 875, letter dated June 25, 1934, written by Mrs. Len Smith to Mr. Martin, also stipulated by Owens.

Q. Did you give a license to anyone other than Hazel and the various licenses prior to your coming with the company, do you know of any licenses given to anybody outside of Hazel and Hartford?

A. Well, there was a license to Thatcher, a license to Ball Brothers, at that time, which were cancelled at their request. There still is a license with the Dominion Glass Company.

Q. Dominion Glass Company of Canada?

A. Yes.

Q. Anybody else?

A. Not on our suction machines. There may be some licenses between Hartford and Lynch and others, subject to discussions we have had here.

Q. Anyone else as far as you know?

A. As far as I know, no.

(Short recess taken.)

[fol. 4188] Mr. Isseks: Your Honor, I had offered Government's Exhibit 874, letter dated December 10, 1934, to the Sparks Construction Company, by Mr. Martin. The witness has asked me to put in the letter which this is a reply to, and I am going to offer that as Exhibit 877, which is dated November 30, 1934, on the letterhead of Sparks Construction Company, addressed Owens Bottle, and signed by Mr. Falk. In view of that, we offer these two documents. I also offer Government's Exhibit 875, a letter dated June 25, 1934——

The Court: I expect you better proceed with 874 and 875. They were about to be read before the recess.

Mr. Isseks: All right.

(Thereupon, Government's Exhibits 874 and 875 were read to the Court by Mr. Shields.)

Mr. Isseks: Now, Your Honor, we are asked here to put the letter to which those two exhibits, 874 and 875, are replies. Now we offer Government's Exhibit 876, letter dated June 14, 1934, addressed to the Owens-Illinois Glass Company and signed by Mrs. Len Smith.

Mr. Middleton: It is a typed copy of a longhand letter. We don't have the longhand letter, but I think the government has it in its file.

The Court: It may be admitted.

(Thereupon, Government's Exhibit 876 was read to the Court by Mr. Isseks.)

Mr. Isseks: I now offer at the plaintiff's request Govern-
[fol. 4189] ment's Exhibit 877, letter dated November 30, 1934, addressed to the Owens Bottle Company, signed Sparks Construction Company, Inc., F. J. Falk.

The Court: It may be admitted.

(Thereupon, Government's Exhibit 877 was read to the Court by Mr. Isseks.)

Mr. Middleton: May we request that you show us the original of these two letters?

Mr. Isseks: If we have them we will be glad to.

Q. Mr. Levis, has your company, so far as you know, since 1918 issued any license other than to the companies you mentioned before?

A. No.

Q. Do you recall, sir, that your company was interested in the latter part of 1937 in the manufacture of insulators made of heat resisting glass?

A. I recall I testified the other day that the Telephone Company was interested in them and asked us if we could make some, and we said no.

Q. Do you remember you were thinking of making insulators made of heat resisting glass on devices based on Tucker, Reeves & Beatty patents?

A. We considered that as a way of filling that order if we got it.

Q. What did you decide to do upon it?

A. I don't think we got the order, therefore it was a moot discussion.

[fol. 4190] Q. Do you recall you took the position you would be justified in making the heat resisting insulators on this equipment in view of the attitude of Corning?

A. We probably used that as a trade argument to get Corning to grant us a license if we did get the order, but I understand we never got the order.

Q. Did your company ever issue a license in connection with Tucker, Reeves & Beatty features of which you have the right to sub-license?

A. Not that I know of.

Q. How much money does your company spend approximately a year for experimentation and development of machinery; I mean machine development experimentation?

A. I would have to break down my figures, but I imagine between a quarter and half million dollars.

Q. Every year?

A. Yes.

Q. That is continuous year after year?

A. It has been so since the bottom of the depression when we didn't feel we could afford to do it.

Q. I will show you Government's Exhibit 672, memorandum from Carter to C. B. Belknap regarding "Proposed Soubier Bulb Machine", and ask you whether the subject of that memorandum, namely, certain patents Mr. Soubier was working on—perhaps I better read it,

"You will perhaps recall our discussion of some little [fol. 4191] time ago about Soubier bulb machine application, S. N. 710,417, filed February 9, 1934. It was suggested that the possibilities of doing business abroad on this design might warrant the taking out of foreign patents. Believe that Mr. Naylor, in particular, was quite sanguine that the bulb situation abroad would make the rights salable.

"It was however suggested that Mr. Soubier better have a simplified set of drawings made up and file a new U. S. application before we attempted to file in foreign countries.

"This afternoon he has shown me such a simplified set of drawings and this memo is to tell you that I am decidedly impressed with the possibilities of this machine—not only for the making of bulbs, but for the making of tumblers—and not only for foreign exploitation, but for promotion in this country.

"As I understand it, the General Electric Company has a practical monopoly on the bulb business in this part of the world, based on their so-called ribbon machine. A ready demand should therefore exist for a competing machine, even if it were not so good, so long as it is capable of turn-

ing out a commercial quality of bulbs at low cost. Mr. [fol. 4192] Soubier asserts, and I believe with good basis, that his proposed machine would make bulbs equally as good as the Gray machine and equally as fast—perhaps even faster. But he particularly calls attention to the fact that the 40% loss which the ribbon process entails, by reason of the cutting off of the moil, would be entirely eliminated in his new machine, and this would go a long way toward establishing his machine as a profitable competitor to the Gray machine, even if it should prove to be somewhat slower than the Gray machine.

"Would therefore suggest that you consider very seriously a possible recommendation that this Soubier bulb machine be made a definite development project, with an appropriation large enough to enable him to test out his ideas, which I believe could be done in an experimental way for $25,000.00 or less, although the building of a complete working installation, which of course must eventually be had in mind, would undoubtedly cost considerably more."

My question to you, sir, is whether the subject matter of that memorandum was brought to your attention in March, 1936?

[fols. 4193-4195] A. Not that I recall.

Q. You deny it was brought to your attention?

A. I don't think it was ever brought to my attention. There were numerous requests for us to develop ideas. We were in the container business. We had no interest in bulbs.

Q. You knew Corning had the largest commercial monopoly on bulbs?

A. No. I knew the General Electric made bulbs and Corning made bulbs, and our Westlake machine was originally our machine and there are still patents on it, and the patent rights were sold to Corning and General Electric because we did not want to stay in that business.

Mr. Isseks: At this time I offer the agreement in existence in 1935 between Owens-Illinois Company and Mr. Soubier regarding any patents he might develop. I am not going to read it. I am just going to offer it as an exhibit. (Exhibit 878.)

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[fols. 4196-4201] The Court: I can't see how the admission of this document will do any harm. I don't know what proving force it may have. It may be admitted.

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[fol. 4202] Cross-examination.

By Mr. Middleton:

Q. Mr. Levis, just referring now for a moment to this one answer which government counsel has not agreed to at page 2818 of the transcript, Line 3.

Mr. Isseks: We will agree to that correction. It is quite obvious what the witness meant.

The Court: Very well.

Q. Referring to page 2818, middle of the page, the question was asked you, "You say what he says is not true?" I hand you the transcript and ask you what your answer to that question was as you now recall it and as you wish it to be?

A. I answered the question as dictated by this memorandum as I recall it. I think it is totally unimportant.

Mr. Isseks: So do I.

A. I simply included this in it to indicate that there were errors we had made from time to time as we went on. This was a rather long statement that did not become a part of the record. I am willing that you and Mr. Middleton work it out any way you want to.

Q. How do you wish your answer to be, Mr. Levis?

A. It is immaterial to me. The answer either way is correct.

Q. The record does not show what either way means. Do you wish to change the answer at all?

[fol. 4203] A. I dictated what my best recollection is of what I said, and the record as it stands doesn't alter the story of what I said.

Q. What is it you have dictated?

A. I dictated——

Mr. Isseks: Would Your Honor like to look at what they have in mind putting in?

The Court: No, I would like to have him continue.

A. "I have talked with him since. He does not even recall it and I do not. I thought he might have added to it." That is the way it stands today in the record. But these words were not taken down, "that the Mayor of Toledo knew the Chairman of the Steel Corporation whose company was going to build a 110 inch steel mill and that if Mr. Collin could get Mr. Werbe to build a plant in Toledo that he might help in securing that order for Mr. Werbe also," at which time Mr. Isseks said, "What!" And I said, "It is purely a sales letter to Mr. Werbe, as I see it." That part of it was left out of the record as I recall it.

The Court: I remember it.

Q. In the direct examination of Mr. Isseks you told us something of your early experience. I think your home was in Alton, Illinois, as a boy, was it not?

A. Yes.

Q. That was the site of the original factory of your [fol. 4204] company, was it not?

A. Yes, sir.

Q. Of the Illinois Glass Company?

A. Yes.

Q. When you got out of school in 1913 your first work in the factory——?

A. I went into the factory about a week after I finished school and went through every department of our business.

Q. You started in the batch room I believe you said the other day?

A. Yes.

Q. Was that doing manual labor?

A. Yes. I was a common laborer.

Q. When did you then leave for Army service, was it 1917?

A. I went to the Second Training Camp, Fort Sheridan, in 1917, and then went to France the latter part of that year.

Q. Then between 1913 and that time you continued to work in the factory, did you not?

A. Yes, sir.

Q. When you left for Army service, what department were you then working in; were you then in the packing room?

A. I was working in the warehouse, carloading.

Q. That was as far as you had progressed up to that time?

A. Well, I was going through all the divisions of our business there, learning it?

[fol. 4205] Q. But you hadn't gotten out of the packing and shipping room at that time?

A. Not that I recollect.

Q. Then you got back in 1919?

A. I came in September, 1918, and had pneumonia and I did not get back to work until the latter part of 1919.

Q. Since that time you have been engaged all the time in this business, is that right?

A. Yes.

Q. Have you had any vacation in the time that has elapsed since the World War?

A. No. I devoted my entire time to the business. The only time I was ever away for several weeks was at Training Camp last August, and the five weeks I spent at Washington.

Q. What is the Training Camp?

A. Officers' Reserve Training Camp last August.

Q. And the last five weeks you spent how?

A. In Washington as a member of the Production Planning Board of O.P.M.

Q. Prior to your graduating from college and going into the factory did you come in contact with the people in the glass business to any extent as a boy?

A. I chummed around with my father and uncles, and met a great many people in the glass industry as a youngster.

Q. Did that acquaintance you formed with those people in your early years before your maturity continue after you became an active business man?

A. Yes.

[fol. 4206] Q. Is it fair to say from the time you first remember you have formed acquaintances with people in the glass container business particularly?

A. Most of the people I know are in that industry.

Q. I wish to refer for a minute now to this memorandum entitled "Price Policy Memorandum," which was put into the record as Exhibit 775, referred to at page 2426 of the transcript, and later at page 2434 of the transcript. You recall that memorandum, do you, Mr. Levis?

A. Yes.

Q. I believe you stated at page 2434, or thereabouts, that you don't recall having sent that to the directors of the company. Have you made any investigation to determine whether or not that or the substance of it was given to your Board at the time it was written?

A. Yes. Since I testified I have had occasion to go over various reports that I made to the Board, and I find in November, 1929, that report in substantially that same form was an official report to the Board.

Q. And to that extent you wish to modify your previous answer?

A. I would like to say the document I testified to was testified to under the circumstances as I recalled that document. I would like to further state that same document in the same form was made a matter of record of the company of reports I made to the Board at a November, 1929, meeting.

[fol. 4207] Q. Now, referring to the 1924 contract between Hartford and Owens, Mr. Levis, there is a section in it commonly referred to as Section 22 which has been mentioned a number of times, and concerning which you have been questioned. Do you recall that paragraph, that is in a general way, what it is about?

A. Yes, I recall.

Q. The so-called veto rights in Owens?

A. Yes.

Q. Will you tell the Court whether or not at any time since February 9, 1931, you or anyone in authority on behalf of Owens-Illinois Glass Company has ever vetoed the issuing of a license by Hartford-Empire Company?

A. Not knowingly, sir.

Q. What was your own attitude toward veto if you had such right before February, 1931?

A. I never had any desire to veto any licenses that were granted?

Q. Mr. Levis, do you have any understanding or contract, written or oral, or in any other form with Hartford-Empire, that requests for license must be submitted to you before they grant the license?

A. No.

Q. Have you had any such arrangement or understanding with them giving you the right to veto certainly since 1931?

A. No.

[fol. 4208] Q. Have you since the cancellation of agreements in 1935 between Owens and Hartford requested at any time that Hartford notify you and procure your approval or consent with respect to their issuing any license?

A. No.

Q. Have you any intention at this time to request Hartford-Empire to give you the opportunity to pass upon or to express an opinion with respect to their issuing a license to anyone?

A. No.

[fol. 4209] Q. Or do you have any intentions to make such request in the future of Hartford-Empire Company to give you that opportunity?

A. I do not.

Q. Does anyone, to your knowledge as an officer of Owens-Illinois Glass Company, or as one in authority in Owens-Illinois Glass Company, have any intention to request Hartford-Empire to afford the opportunity to anyone in Owens-Illinois to express an opinion with respect to their granting licenses in the future?

A. Not that I know of.

Q. In the course of the examination, Mr. Levis, mention has been made of a Miller Defense Group and mention has also been made of the purchase by Lynch of certain assets of a Miller Machine Company. Do you recall those two expressions,—the Miller Defense Group and the Miller Machine Company?

A. Yes, sir.

Q. For the record, I would call your attention particularly to the discussions at pages 2775 and 2776, and that was a part of Mr. Issek's examination of you. Will you tell us very briefly what this Miller Defense Group was and why it was formed, as you understood it, and what was involved in that matter?

A. Well, I don't know that I can tell you what was involved. The only point I can bring out is that the Miller Defense Group, known as the so-called Miller Users, was something that resolved itself from the activities of the [fol. 4210] William Miller group in Swissvale; and the Miller Machine & Mold Company, of Columbus, was an entirely different Miller and an entirely different situation.

Q. The Miller Users were the users, were they not, of feeder devices that were covered by certain patents owned or controlled by this Miller of Swissvale, Penn'a?

A. So far as I know, yes, sir.

Q. That whole group were interested in feeders as distinguished from formers?

A. That is my understanding of it, yes, sir.

Q. And the rights to use feeders?

A. Yes, sir.

Q. But the Ed Miller Company which was purchased by Lynch in 1933, that company made forming machines, did it not?

A. That is the way I understand it.

Q. Were they wide- or narrow-mouth machines?

A. Wide-mouth machines.

Q. Was there any connection whatever between the Miller Users you have mentioned and the Miller Machine Company of Columbus, that was purchased by Lynch in 1933?

A. Not that I know of.

Mr. Isseks: I will stipulate it.

Mr. Middleton: I mention it because in the examination Mr. Isseks appears to go directly and designedly from a discussion of Miller Users into the purchase of Miller by Lynch, and I wish the record to be perfectly clear that there could be no connection between the two.

[fol. 4211] By Mr. Isseks: Stipulate again no connection between them at all.

Mr. Middleton: Very fine.

Q. You have testified you were on the Hazel-Atlas board from 1933 to sometime in 1935, and I believe you stated you did not attend any meetings of the board of Hazel-Atlas after July, 1935; is that correct?

A. As far as I recollect, yes.

Q. Now, the agreements between Owens and Hartford were executed September 30th and October 1st, 1935, and the agreement between Hazel-Atlas and Owens-Illinois their separate agreement, was made October 1st. Will you state whether or not, while on the board of Hazel-Atlas, you at any time participated in the discussion of, or took any action with respect to, any of those agreements?

A. I did not.

Q. Do you remember of being present when these agreements were authorized or discussed?

A. I do not.

Q. You had no part as a board member of Hazel, in the making of those agreements; is that right?

A. No, sir.

Q. That is a correct statement, is it; what is the answer?

A. I did not have anything to do with it.

Q. At page 2694 of the transcript there is reference to a letter read by Senator Borah, and the transcript contains a portion of the letter, which you read, commenting upon [fol. 4212] the Senator Borah letter. Do you recall that in a general way, the fact that has been brought out?

A. Yes, sir.

Q. Do you recall having the Senator Borah letter called to your attention sometime after he read it into the Congressional Record, at about that time?

A. Yes, sir.

Q. Is it not a fact, Mr. Levis, that the letter which Senator Borah read into the Congressional Record was an anonymous letter to Senator Borah?

A. It was, yes, sir.

Q. Did you make any effort to ascertain who had written that letter to Senator Borah?

A. Yes, I made the best effort I knew how to get certain people I knew who knew the Senator, to ask him if he would disclose to them who it was that wrote the letter.

Q. What answer did they receive from Senator Borah according to your information?

A. Nothing to indicate that it was not an anonymous letter.

Q. Were you ever informed, as a result of your inquiry, as to who did write the letter to Senator Borah?

A. No, sir.

Q. This matter was mentioned, was it not, during the course of the TNEC hearing?

A. Yes, sir.

Q. While the testimony was being taken?

A. It was brought up then.

Q. What did Senator Borah do when this question of the [fol. 4213] letter came up that he had read?

A. Got up and left the room.

Q. Did he stay there while it was being discussed?

A. No, sir; he was out of the room for several hours during the discussion.

Q. And it was following the reading of that anonymous letter that you wrote your Uncle Harry that you thought you would just get off the Hazel-Atlas board, was it?

A. That was the time, yes, sir.

Q. In connection with the 1932 contract between Owens

and Hazel, there is a 15% provision, so-called. Will you state whether or not Owens-Illinois has at all times and up to the present, since 1935, manufactured more than 15% of its ware on feeder-fed machines?

A. The Owens-Illinois Glass Company, together with its wholly-owned subsidiary, the Owens Pacific Coast Glass Company, has.

Q. Down to the present time, so far as you know, that percentage has considerably exceeded 15%, has it not?

A. Yes, sir.

Q. What is the name of the Coast Company?

A. Owens-Illinois Pacific Coast Company.

Q. That is a wholly-owned subsidiary, is it not, of Owens-Illinois?

A. Yes, sir.

Q. And it operates feeder-fed machinery altogether, I believe you stated the other day?

A. Yes, sir.

[fol. 4214] Q. Is there anything more you care to say regarding this question of why Owens-Illinois did not go into the bulb business in 1936?

A. I didn't feel we were interested in manufacturing and sale of bulbs; it was a different industry than we were largely active in.

* * * * * * *

Further examination.

By Mr. Philbin:

Q. Have substantially all, or all of the feeders which the Owens-Illinois Company has used in commercial production for at least the past ten years, been obtained from Hartford-Empire Company?

A. So far as I know, yes, sir.

* * * * * * *

[fol. 4215] Redirect examination.

By Mr. Isseks:

Q. Isn't it a fact, sir, in 1936,—the latter part of '35 and the early part of '36,—there was called to your attention the

circumstance someone was interested in putting up a glass container plant in Detroit?

A. Yes, sir.

Q. And who called it to your attention?

A. Ben Hazelton, as I recall it.

Q. Did you say anything to Hartford about that?

A. I might have talked with them about it.

Q. What is your best recollection of what you told them?

A. That I had learned somebody was interested in putting up a glass factory in Detroit.

Q. Did you tell them your attitude?

A. I might have, sir; I don't deny that I expressed my attitude.

Q. Isn't it a fact you told representatives of Hartford under no circumstances should they issue a license to anyone to manufacture and produce glassware in the Detroit area?

A. No, sir, I have no recollection of any such thing.

Q. Or use words in substance that told the Hartford people you would look with disfavor upon their issuance of a license to anyone in Detroit?

A. I don't recall it, sir. If you will refresh my recollection I will be glad to know what it is.

Q. We may produce a witness before the trial is over. [fol. 4216] What is your recollection?

A. My recollection is I didn't. I don't know why I would have wanted to have done it.

Q. Weren't you selling in the Detroit area,—your company?

A. Sure, still are.

Q. Shipped from Toledo?

A. We never made any bottles in Toledo for fifteen years.

* * * * * * *

[fol. 4217] Thereupon the government called as a witness, C. W. Schwenzfier, who, being first duly sworn, testified as follows:

Direct examination.

By Mr. Apsey:

Q. Please give us your name and address.

A. C. W. Schwenzfier; 3523 Brookside Road, Toledo.

Q. Is that in Ottawa Hills?

A. Yes.

Q. You are at present retired?

A. I am.

Q. You were at one time employed by the Owens-Illinois Glass Company?

A. By the Owens Company first and then afterwards by Owens-Illinois.

[fol. 4218] Q. At what time were you first employed by them?

A. I started in with the old Toledo Glass Company about 1901.

Q. And who employed you?

A. Mr. Owens started me.

Q. And at some later time you were employed by the Hartford-Empire Company?

A. Yes, sir.

Q. When was that?

A. I couldn't tell the exact date but I started with them about '30 or '31.

Q. When did you leave their employ?

A. About '36, I think. I don't have the exact date—'37.

Q. In what capacity were you employed with the Owens people?

A. Well, started in as foreman of the machine shop and ended up as general factory manager.

Q. In what capacity were you employed by Hartford?

A. I don't know. I didn't have any position.

Q. What sort of work did you do?

A. Well, started in to assist Mr. Peiler in developing some kind of a suction method of making bottles, which was never developed.

Q. Well, were you employed in the field?

A. Yes, afterwards in the service deparment, traveling around to see the different licensees.

Q. Sometime when you were in the service department, along in the end of 1935, did you have any contact with Mr. George E. Day, of Detroit?

[fol. 4219] A. I did.

Q. With respect to plans for a Detroit factory?

A. I did, yes, sir.

Q. And did you have several conferences with Mr. Day and his associates?

A. I did.

Q. You traveled in Detroit for that purpose?

A. I did.

Q. Where were you living at that time?
A. In Toledo,—that is out in Ottawa Hills.
Q. I show you now Government's Exhibit 502, which is a letter dated February 28, 1936, from Mr. A. M. Pease, of the Hartford-Empire Company to Mr. George E. Day, and I ask you to look at that letter and tell me whether it is familiar to you.
A. The letter itself, no, but some of the contents.
Q. Where did you learn about the contents of the letter?
A. Why, Mr. Day told me some of the things in that letter.
Q. On one of your trips to Detroit?
A. Yes, sir.

Mr. Apsey: This is a letter, Your Honor, in which certain detailed information was requested by Mr. Pease in his letter to Mr. Day as the prerequisite to the granting of a license.
The Court: What is the number of it?
Mr. Apsey: It is Exhibit 502.

Q. After you conferred with Mr. Day in Detroit and were shown that letter, what happened next?

[fol. 4220] Mr. Goodrich: May I interpose just a moment? I think he didn't say he was shown the letter. He was told about it.

Q. And were told about that letter—what happened next?
A. Why, Mr. Day and Mr. Clippert couldn't understand why that information was asked for so much in detail, inasmuch as they had already given a great deal of the information to Hartford through me.
Q. That is what they said to you?
A. Yes.

Mr. Goodrich: I must object to the answer, the impression and conclusion of Mr. Day.
The Court: It is in the record. I will let it stand as it is.

Q. Did you then return to Toledo?
A. I did.
Q. Were you in any further way connected with the negotiation?
A. Yes.
Q. What was your next connection with it?
A. Why, Mr. Day wanted to confer with me some more

in regard to finding out as to what might be done to overcome these difficulties and still get a license.

Q. What did he do—he telephoned you?

A. Yes, sir.

Q. What did you say to him?

A. I wrote letters to Hartford asking what stand I should take—I should say to these people.

Q. Did you receive any reply?

[fol. 4221] A. No reply whatever.

Q. What finally happened?

A. They finally told me they were coming down to see me.

Q. Who told you this?

A. Mr. Day, over the phone; and I sent a telegram to Hartford-Empire asking for instructions.

Q. And did you receive any response to the telegram?

A. Not by wire, but by telephone.

Q. Who called you by telephone?

A. Mr. Pease.

Q. Will you tell us the substance of what he said to you and what you said to him on the telephone?

A. Well, it was something like this: He said, "Is that you, Schwenzfier?" I said, "Yes." He said, "Well, when those fellows come down to see you, don't talk about glass factory in any way, just skip it; skip it"; and then a pause—"if you know what I mean."

Q. Can you tell us about when that telephone conversation was, how soon after you were shown this letter?

A. Oh, I cannot tell you; I don't know the date; but it was right shortly after that,—maybe a week or ten days,—I can't tell you.

Q. You place that some time in March of 1936?

A. Whatever the date of that letter, and then some short time right after, a few days or a week.

Q. Did you have any further conference with Hartford-Empire about the matter?

A. Well, on my next visit to Hartford it was talked over [fol. 4222] with Mr. Eldred.

Q. How long after they told you about this letter was the next visit to Hartford?

A. I cannot tell that, probably a month or six weeks, something like that. My visits to Hartford were intermittent.

Q. Whom did you see in Hartford about this matter?

A. Mr. Eldred.

Q. Will you tell us the substance of what he said and what you said at that conversation?

A. Well, I was asked to come to his office, and we sat there and talked about a number of things and finally I said, "How about this Detroit glass factory. On what did you base your reason for not going along or coming to an agreement with them? The people seemed to be all right; it was no stock jobbing being done about it." And he kind of smiled and he said, "Well, Bill, we have an agreement with Owens-Illinois that when anybody asks for a license from us we refer it to them, and if anyone asks them for a license they refer it to us, and evidently they didn't approve."

Q. This was in 1936?

A. Yes, right after that letter.

Mr. Apsey: That is all.

Cross-examination.

By Mr. Goodrich:

Q. Was Mr. Clippert a personal friend of yours?

A. No, sir.

Q. Or Mr. Day?

A. No, sir.

[fol. 4223] Q. Anyone in the group up there?

A. No, sir.

Q. You had no personal acquaintance with any of the Day group, so-called?

A. Not until after the negotiation started.

Q. How did the negotiation start, did Mr. Day get in touch with you?

A. Yes.

Q. You then went into conference with him?

A. I did.

Q. Had you received any instructions from Hartford to confer with Mr. Day?

A. Not to confer with Mr. Day, but to keep my attention on the Detroit matter and report things very closely to Mr. Eldred.

Q. I am trying to get at the first instruction, or the first invitation to conference. Did it come directly from Mr. Day?

A. It did.

Q. Before you had any instruction from Hartford?
A. Yes, sir.
Q. And you went ahead and conferred, investigated, with Mr. Day?
A. Yes, sir.
Q. Before receiving any instructions from Hartford?
A. Well, I had instructions from Hartford, because prior to this Day-Clippert attempt to start a glass factory in Detroit there had been several other attempts there.
[fol. 4224] Q. And when were those, in prior years?
A. Yes, in prior years. I was instructed by Mr. Eldred to keep close watch with the people in Detroit.
Q. To get in touch with the people?
A. Yes.
Q. See what their setup was?
A. Yes.
Q. See what machines they proposed to use?
A. No, just talk the thing over with them.
Q. See what finances they had?
A. No.
Q. Did you investigate the finances of the Day group?
A. No, sir.
Q. Did you know the answers to the questions in Exhibit 502, the letter that was sent to Mr. Day, just shown to you by Mr. Apsey?
A. No, sir, I didn't know those answers.
Q. You didn't know what their financial setup was?
A. No, sir.
Q. You didn't know who their financial sponsors were?
A. All I know was Mr. Clippert said he would furnish the money.
Q. But you didn't know how much money?
A. No.
Q. Did you know what sized plant they contemplated?
A. What they thought they were going to build, the size, yes.
Q. Was it your opinion the plant they contemplated, as told you by Mr. Day, could be run effectively, remaining in [fol. 4225] competition with the glass manufacturers of the vicinity?
A. Yes.
Q. That was your opinion?
A. Yes, sir.

Q. And you told Mr. Day so?
A. Yes.

Mr. Isseks: The question was could it or couldn't it be?
Mr. Goodrich: Could it.
Mr. Isseks: And the witness said "yes"?
Mr. Goodrich: Yes.

Q. You never sat down with their engineer and checked over their proposed plan?
A. I never knew they had an engineer.
Q. So you never saw any plans for a factory or anything else?
A. No.
Q. When did you leave the employ of Hartford?
A. It must have been '37 or '38, in May.
Q. Why did you leave?
A. Because Mr. Eldred and I had a difference of opinion about a matter.
Q. A little misunderstanding as to how things should go?
A. Yes.
Q. Did you make any memorandum of the conferences you had with Mr. Day?
A. Only in the letters I wrote to Hartford, in my report.
Q. You have none of those here with you?
[fol. 4226] A. No, sir.
Q. Any way you can better fix the time of your telephone conversation with Mr. Pease?
A. Not absolutely.
Q. Or your visit with Mr. Eldred?
A. Not absolutely I cannot, but it was right shortly after this letter that has been brought in, that Mr. Pease wrote.
Q. Did you make a memorandum of your telephone conversation with Mr. Pease after you had it?
A. Yes, I wrote a letter to Mr. Eldred about it.
Q. And did you make a memorandum of your conversation in Hartford with Mr. Eldred?
A. No, I didn't.
Q. So what you gave us this morning was your recollection from that time?
A. No, it was what I actually did say to him.
Q. You remember that very clearly?
A. Oh, positively.
Q. Without any memorandum?
A. Yes, sir.

Q. But you cannot remember the date?

A. No. It was on a visit there. The Hartford-Empire Company has the date when I visited there.

Mr. Goodrich: That is all.

Cross-examination.

By Mr. Wood:

Q. I have a couple of questions. I believe you testified, Mr. Schwenzfier, that you worked with Mr. Peiler on the [fol. 4227] development of suction inventions, is that correct?

A. Well, when I went to Hartford the reason they asked me to come was to try to help Mr. Peiler develop some way of using the suction machines without the revolving tank.

Q. And were you an experienced suction man?

A. I think I am, yes.

Q. Was suction considered a different problem, technically, from production of bottles by the feeder-former method?

A. Oh, yes.

Q. Completely different field?

A. Yes, it was a different method entirely.

Q. Well, did it take different experience and different knowledge?

A. Yes, it does.

Q. How early did you become acquainted with the suction method of producing bottles?

A. Before the suction method started, at the first machine where the experimental work was going on here in Toledo in 1901.

Q. Did you see those early experimental machines?

The Court: How far do you expect to go into this line of examination?

Mr. Wood: Not very far. I just want to show there was a difference in the two fields.

Mr. Isseks: We will stipulate it. We will stipulate that suction and gob feeding are different.

Mr. Wood: I wanted a question or two of the witness. [fol. 4228] I am qualifying him as an experienced man.

The Witness: Well, Mr. Owens had me come to Toledo as superintendent of his machine shop, and there is where

the machine was first developed, the very first suction machine that was ever built, a little hand-machine—and I was the one who built it—and I helped develop the thing all the way through, up to the twenty-arm machine.

The Court: Any further questions of this witness?

That will be all.

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Thereupon the government called as a witness, J. C. Blair, who, being first duly sworn, testified as follows:

Direct examination.

By Mr. Isseks:

Q. Where do you live, sir?

A. Toledo.

Q. Whereabouts?

A. Scottwood Ave.

Q. In 1920 what company were you connected with?

A. Owens Bottle.

Q. How long had you been connected with that company at that time?

A. In what month of '20?

Q. Any time in 1920?

A. Three years.

Q. In what capacity were you connected with the company in 1920?

[fol. 4229] A. I was vice-president. I don't know whether any other title or not.

Q. How long did you stay with the company, sir?

A. Until January 1, 1924.

Q. You continued after to do some work for them, did you not?

A. I continued some negotiations for them on the Hartford-Empire transaction.

Q. And except for that bit of business, carrying out the negotiations to completion, you were no longer connected with Owens in 1924?

A. No.

Q. What company did you become connected with on January 1, 1924?

A. I had been with both Owens Bottle and Libbey-Owens in the same capacity with both companies.

Q. In other words, for sometime prior to January 1,

1924, you were vice-president of both Owens Bottle and Libbey-Owens-Ford?

A. That is right.

Q. Beginning with January 1, 1924, you devoted your full time to Libbey-Owens-Ford except the carrying out of these negotiations?

A. That is correct.

Q. How long did you stay with Libbey-Owens-Ford?

A. Until 1931, about January 1, 1931.

Q. What have you been doing since January 1, 1931?

A. Nothing.

Q. You are retired?

[fol. 4230] A. Call it that.

Q. Have you had any connection with either the Owens Bottle or Libbey-Owens-Ford since January 1, 1931?

A. None whatever. I beg your pardon, I think during 1931 on I was director in Libbey-Owens.

Q. You haven't had any contact with the Owens-Bottle since 1924, when you finished the negotiations?

A. As a company official.

Q. I mean as an officer and director?

A. No.

Q. You may have had some stock after that in Owens Bottle?

A. Yes. Not recently, however.

Q. But for some time thereafter?

A. Maybe a year or two or three.

Q. You knew Mr. Michael Owens very well, did you not?

A. Yes.

Q. You were, in fact, one of the administrators of his estate, were you not?

A. Yes.

Mr. Isseks: At this time I offer as Government's Exhibit 879, a document dated June 10, 1920, addressed to the executive committee of the Owens Bottle Company, signed M. J. Owens, stipulated as genuine by Owens-Illinois at page 3 of the stipulation.

Mr. Wall: If Your Honor please, this exhibit—and it may be some others—will fall in the same class you admitted as showing the state of mind of Owens or the intra-corporate acts of Owens. So far as it contains state-

[fol. 4231] ments about Hartford and statements of the

existing fact as to Hartford operations and intentions, I think it should be limited.

Mr. Isseks: We agree.

Mr. Wall: And not received for the full purpose.

The Court: Very well. Is that first document one full page?

Mr. Isseks: Yes, sir, June 10, 1920.

The Court: It may be admitted.

(Government's Exhibit 879 read by Mr. Shields.)

[fol. 4232] Q. Mr. Blair, what is your present recollection of your first contact with Hartford-Fairmont and negotiations with regard to possible arrangement between Hartford-Fairmont on the one hand, and Owens Bottle Company on the other?

A. The latter part of 1921.

Q. Tell us your present recollection what happened; did you go somewhere with somebody?

A. There was a meeting at a hotel in New York.

Q. Who was there on behalf of Owens?

A. Mr. Libbey, Mr. Owens, Mr. Biggers, and myself.

Q. Mr. Libbey at that time was what?

A. President.

Q. Of the Owens Bottle Company?

A. Yes, sir.

Q. Mr. Owens was what?

A. Vice-president.

Q. And you were vice-president?

A. Yes.

Q. Mr. Libbey and Mr. Owens are both dead?

A. Yes.

Q. Mr. Biggers is now the gentleman who is president of Libbey-Owens-Ford?

A. Yes.

Q. Was he at that time in a dual capacity like you are?

A. No.

Q. He was just with Owens Bottle?

[fol. 4233] A. Yes.

Q. When did he go to Libbey-Owens-Ford, your best recollection?

A. About the early part of 1930.

Q. Was he a Vice-president then of Owens Bottle?

A. No.

Q. What position did he hold with Owens Bottle?

A. At that moment?

Q. 1921?

A. I think he was a vice-president.

Q. Who was there on behalf of Hartford, your present recollection?

A. Herbert Knox Smith and Goodwin Smith.

Q. Tell us to the best of your recollection what happened at the time of the first conference?

A. Mr. Owens made a long statement reviewing the history up to that particular moment. I don't remember much detail about that. Subsequently each company appointed a representative to carry on negotiations.

Q. Who were those representatives?

A. Mr. Herbert Knox Smith on the part of Hartford-Empire and myself on the part of Owens Bottle.

Q. If I show you Mr. Herbert Knox Smith's memorandum of the conference as I did late yesterday afternoon, would it help your recollection as to details of what transpired?

A. What is it you want me to remember?

[fol. 4234] Q. I don't want you to remember except your best recollection?

A. Do you want me to remember everything that is on that paper?

Q. I want to know if it will refresh your recollection as to details?

A. Let me look at it.

Q. I will show you Government's Exhibit 23, which is a memorandum of the first conference at the Ritz-Carlton and signed by Mr. Herbert Knox Smith, and I will ask you whether you remember any of the matters set forth therein?

A. Well, I remotely remember this statement of Mr. Owens that is outlined in here.

Q. Yes, sir.

A. Well, in substance, Mr. Isseks, that is about all I remember.

Q. You don't remember what Mr. Smith said as indicated here?

A. No.

Q. You do remember that you were appointed one of a committee of two?

A. Yes.

Q. Who was the other gentleman?

A. Herbert Knox Smith.

Q. Then you had further conference with Mr. Herbert Knox Smith?

A. Many of them.

[fol. 4235] Q. There was a conference the same day between you and Knox Smith after the big conference broke up, do you remember that?

A. I don't remember it definitely, no.

Q. I show you Government's Exhibit 25, which is a memorandum written by Herbert Knox Smith and refers to a conference immediately after the first conference in which he sets forth various statements made by himself and by you. I will ask you to look at that and see what is set forth there substantially is what transpired at the conference immediately following the big conference?

A. Mr. Isseks, I would not be able at this time to say this is accurate or inaccurate.

Q. In other words, you neither would affirm it nor deny it?

A. No. I could not twenty years afterwards.

Q. Do you want to read it to see if you can remember any part of it?

A. If it is important I will read it.

Q. You read it yesterday?

A. I skimmed through it.

Q. It did not refresh your recollection at all?

A. Not in any detail.

Q. You do not dispute you were present in the conference?

A. No.

Q. You do not dispute what Mr. Herbert Knox Smith said took place did take place?

[fol. 4236] A. I don't know whether I dispute it or not when I don't remember whether it is so or not.

Q. Now I show you Government's Exhibit 29, which is a letter dated December 27, 1921, written by you, and ask you whether that is your signature?

A. Yes.

Q. That refers to a letter of December 23rd, which is Government's Exhibit 28, from Mr. Herbert Knox Smith, and is it a fair statement to say you were replying to a letter Mr. Knox Smith wrote you on December 23rd?

A. Let me read it and find out.

Q. Why don't you look at your letter. You say "your favor of December 23rd"?

A. I would say that is a reply to Mr. Smith's letter.

Q. You will notice in Government's Exhibit 28 Mr. Knox Smith is sending you a memorandum of the general interview between all seven gentlemen on the morning of the 16th, in the first sentence, isn't that so?

A. Yes.

Q. Then your letter, Government's Exhibit 29, you say; "Your favor of December 23rd enclosing memorandum of morning conference December 16th has been received. I have reviewed this memorandum once this morning, and I would like to call attention to Mr. Bartlett's review of Mr. Owens' proposition, on page 6, Section 14. To the points enumerated in this section should be added",—then you list certain additional items?

[fol. 4237] A. Right.

Q. Apparently you went over Mr. Knox Smith's memorandum, did you not?

A. Yes.

Q. There were other conferences besides this initial conference, were there not?

A. Many of them, lasting three years.

Q. Continuous conferences?

A. More or less continuous. There was a break in, I think just before I went to Europe, as I looked upon as being a definite break. That was renewed after I got back some three or four months afterwards.

Q. Then they picked up where they left off, did they not?

A. I could not say whether they picked up exactly where they left off or not.

Q. I show you Government's Exhibit 26, which is a memorandum by Herbert Knox Smith, of a conference held January 10th, 1922, at the Ritz-Carlton, and ask you whether, looking at that memorandum refreshes your recollection as to what transpired at the conference referred to by Mr. Knox Smith. Apparently the conference ran two days. If you look at page 8 you will see they started on January 10th, 1922, and went over to January 11th?

A. Some of these things I remotely recall, Mr. Isseks. I can't say as to the accuracy, whether they were put down here in accordance with my understanding. There were [fol. 4238] many of Mr. Smith's memorandum which were not accurate from my standpoint according to the meetings we held. Whether this happens to be one of those, I don't know.

Q. I direct your attention to paragraph 19 on page 8, where it says, "Mr. Blair handed to Messrs. Goodwin and Knox Smith a memorandum in considerable detail of the Owens plan dated January 9, 1922", and I show you Government's Exhibit 27, which to my recollection has been identified by Goodwin Smith as a memorandum handed to those gentlemen, and I ask whether that conforms to your recollection?

A. Well, I remember remotely about discussing a holding company, but whether that is the memorandum that we presented I would not know.

Q. You would not affirm it or deny it?

A. I would not affirm it or deny it.

Q. Directing your attention to Government's Exhibit 26, memorandum of an interview of Herbert Knox Smith, in which he states you were present, I direct your attention to paragraph 26 at the bottom of page 10, where Mr. Knox Smith says, "Mr. Blair then explained the general principles at the bottom of this proposition. He felt it necessary that there should be in the glass industry some concern like Owens in a sufficiently strong position practically to force a stable price policy upon all important producers; that if Owens, by the plan as above suggested, had the free [fol. 4239] use of its own suction feed and the free use of the gob feed it could then go to any other producer who threatened to cut prices and unstabilize the market, and inform him that such a policy was detrimental, but that if the outsider persisted in doing so Owens had a sufficient margin, by reason of its free use of both devices, so that if necessary it could come out on top in a price war and still make money. He felt that some such stabilizing influence was necessary, and that it could only be established through one company having such a peculiar strength as would be given in this case. Either he, or Mr. Biggers, referred to the position of the United States Steel Company as an example". I will ask you, Mr. Blair, whether that substantially sets forth the attitude that you reflected in the statement that you made to Mr. Knox Smith and F. Goodwin Smith?

A. It may be one of the points I considered, Mr. Isseks.

Mr. Isseks: Now at this time, Your Honor, I wish to offer as the next government's exhibit a letter dated January 19, 1922, written to the witness by Herbert Knox Smith

enclosing the memorandum which is Government's Exhibit 26 in this case, as Exhibit 880. I offer it in evidence.

The Court: It may be admitted.

(Thereupon Government's Exhibit 880 was read to the Court by Mr. Isseks.)

Mr. Isseks: I next offer in evidence a telegram written [fol. 4240] by the witness, stipulated as genuine by Owens-Illinois, as the next Government's Exhibit 881, dated January 24, 1922.

The Court: It may be admitted.

(Thereupon Government's Exhibit 881 was read to the Court by Mr. Isseks.)

Q. Now, Mr. Blair, I show you Government's Exhibits 880 and 881,—880 being the letter enclosing the memorandum of a conference between Messrs. Biggers, Goodwin Smith, yourself, and Knox Smith, on January 10,—881 being a telegram from you correcting Section 21, and I show you Government's Exhibit 26, and I ask you if it is not a fact that a copy of Government's Exhibit 26 was enclosed with the letter of January 19, 1922, to you in which you made the suggestion of a change in Section 21?

A. Do you want me to read Section 21?

Q. That is the best way of finding out, sir?

A. Do you want to know whether this telegram refers to this memorandum?

Q. That is right.

A. It does not directly refer to the date on this memorandum.

Q. I am taking it by looking at Section 21, Government's Exhibit 880, and your telegram, 881. I am asking whether reference is made to Government's Exhibit 26. Do you want to look at Section 21,—will that help you any?

A. I assume it is an acknowledgment of that memorandum.

[fol. 4241] Mr. Isseks: Thank you, sir. At this time I offer the next government's exhibit, copy of a letter dated February 1st, 1922, written to Mr. Lloyd T. Williams, stipulated as genuine by Owens, to which is attached a three page memorandum called, "Modified Proposal Submitted to Representatives of Hartford-Fairmont Company at Con-

ference held at New York on February 8th. That, too, is stipulated as genuine. I offer the letter as one exhibit, and the memorandum attached to it as an "a" number.

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Mr. Wall: Hartford requests that this exhibit, if admitted, be admitted similarly to Exhibit 879.

Mr. Isseks: We agree.

The Court: Very well.

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[fol. 4242] The Court: They may be admitted.

(Thereupon Government's Exhibits 882 and 882-a were read to the Court by Mr. Shields.)

Mr. Isseks: At this time I offer Government's Exhibit 883, reply to Government's Exhibit 882, on the letterhead of Brown, Geddes, Schmetteau & Williams, addressed to the Owens Bottle Company, attention Mr. Biggers, re Owens Bottle-Hartford-Fairmont, stipulated as genuine by Owens-Illinois at page 2 of the stipulation.

Mr. Middleton: Objection. It is clearly Mr. Williams' opinion. Each one of them appear in lawyer-like fashion.

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[fol. 4243] The Court: Well, I will defer the ruling on it then.

• • • • • • •

[fol. 4244] Mr. Isseks: I defer to Your Honor's ruling in the matter.

At this time I would like to have marked in evidence, [fol. 4245] telegram written by the witness addressed to Mr. F. Goodwin Smith, dated March 20, 1922, stipulated by Owens as genuine, Government's Exhibit 884.

The Court: It may be admitted.

(Government's Exhibit 884 read by Mr. Shields.)

Mr. Isseks: At this time I would like to have marked as Government's Exhibit 885, the memorandum which is stipulated as coming from the files of Owens, which bears no date other than the notation in the upper right-hand corner "3-22", and is headed in the center: "The Owens Bottle Company's contribution to a combination of Owens Bottle and Hartford-Fairmont Companies." There is a certificate,

too. I ask the witness whether he is the author of that document?

A. I might have contributed toward it.

Q. Reading it, it looks like something you might have contributed to at the time when it was prepared.

A. Several of us might have sat around and considered it.

Q. At that time who were in charge of negotiations for Hartford?

A. Mr. Goodwin and Mr. Herbert Knox Smith.

Q. What about the Owens people?

A. I think Mr. Biggers and myself. I know I was. I don't know whether Mr. Biggers was at Atlantic City or not.

Mr. Middleton: We object.

The Court: What are the grounds of your objection?

Mr. Middleton: The authenticity is not proven at all. [fol. 4246] We don't know the purpose in presenting it. Certainly the authorship is not in any way proven, therefore we don't know who would be bound.

The Court: The witness said he contributed towards it.

Mr. Middleton: He might have contributed some of the thought.

The Witness: I might have contributed some of the thought.

(Previous answer read: "I might have contributed toward it.")

Mr. Middleton: May we ask the witness the direct question whether he prepared this or ever saw it in his life before?

The Court: You may, but he is on record as saying he contributed toward it.

Mr. Middleton: What did you mean, Mr. Blair, by saying you "contributed toward it"?

The Witness: Some of the statements in there sound, to my recollection like some of the things I would contribute. I would have contributed that they would have had advantages by a combination for the settlement of these patent difficulties.

Mr. Middleton: Did you prepare this?

The Witness: I cannot answer that question.

Mr. Isseks: You neither affirm nor deny it?

The Court: Just a minute. I think I will admit the doc-
[fol. 4247] ument.

Mr. Wall: May our objection be noted,—Hartford's—to the document? I may say I don't know whether we ever had this or saw it before.

Mr. Isseks: For a limited purpose.

Mr. Wall: Only against Owens, so far as state of mind.

Mr. Middleton: It is not covered by stipulation.

Mr. Isseks: Yes, it is. It comes from the files.

Mr. Middleton: Not as to authenticity. There is no admission on the record anywhere so far as we are concerned, this was prepared by anybody in the Owens organization. I want that perfectly clear.

The Court: It is stated in the certificate it is a true copy of the original in the files and records of the Owens Company, and attested to by the secretary, Mr. Martin.

Mr. Middleton: Is that stamp understood by Your Honor? That has been discussed several times. It was only put on these documents in the TNEC days. It was not put on there to indicate that we had the original document, that is the document which, in law, would be the original. A layman drafted that, and it is entirely different from the stamps on any of the other documents that have been presented here. Just why, I don't know. Probably different men came from Washington, looked through the records of Owens, and went to Hazel-Atlas, but in none of the other files that I have seen is the statement that this [fol. 4248.] is a true copy of the original document, as though the original was being emphasized. We have explained that a number of times. We do not purport to have in our files the signed document, or what in law was the original document, but we had a paper which, in each instance, was a copy, and this is certified to be a true copy of a thing that was in our file, and was copied, but certainly not as an admission to anyone that it was a genuine signed copy, or the thing that the person had drawn, the original copy of it. We have certified a great number of documents, and have stipulated that they were in our files, as true copies of what were in our files, but not as being drawn by us. We don't know who drew them; not the slightest idea.

Mr. Isseks: May I have it read?

The Court: It may be read.

(Government's Exhibit 885 read by Mr. Kramer.)

Q. Mr. Blair, I now show you a document that has been marked Government's Exhibit 886 for identification, and it has on the top a notation "3-22" in pencil, then it has at the top, typewritten, "Possible disadvantages of not agreeing", and it has been stipulated by Owens-Illinois as coming from its files, at page 1 of the stipulation, and has a certificate at the front by Mr. Martin. I ask you to look at it and tell me whether you prepared, or aided in the preparation of that document?

A. I don't know whether I did or not.

[fol. 4249] Q. Does it look like a memorandum that you prepared in connection with these various negotiations? In that connection I show you Government's Exhibit 885, as to which you testified, as I recall, you contributed toward the preparation?

* * * * * * *

The Court: "Might have contributed toward "the prepa-

[fol. 4250] ration."

The Witness: I still emphasize the word "might", because there art thoughts in this memorandum I can see I contributed as being my thoughts. There are others I didn't consider as my thoughts. My answer is this: I don't know whether I had anything to do with that document or not.

Q. Look at Government's Exhibit 886 and tell us which thoughts you might have contributed to?

A. I wouldn't attempt to do that now.

Q. Might you have contributed the thought set forth in Government's Exhibit 886?

A. For instance, I might have contributed to the thought we had inventive genius in our company. That is an example of what I refer to.

Q. Look at Government's Exhibit 886. Did you contribute any of the thoughts set forth there?

A. You mean in the preparation of this document?

Q. Yes, sir.

A. I cannot answer that.

Q. Toward it?

A. Yes.

Q. You don't deny or affirm that you helped prepare it?

A. I would have to have evidence to believe I prepared it. I wasn't in the habit of preparaing documents of that kind.

Q. Who would prepare it?

A. I wouldn't know who would prepare documents like that.

[fol. 4251-4252] Q. Was Mr. Biggers in the habit of preparing documents like that?

A. He might have.

Q. Then I will have to have Mr. Biggers here.

Mr. Isseks: I submitted a memorandum as to the admissibility of the Exhibits 625 and 761, on the ground that they came from the files of Owens-Illinois. We filed it yesterday, and served copies on counsel. I submit it is admissible. If there is to be a lot of trouble on that we will get Mr. Biggers and find out if he wrote it.

Mr. Middleton: May I inquire the basis for the statement that Exhibit 886 is dated? The copies we have are not dated.

Mr. Isseks: Perhaps I better have the copy that comes from the files of Owens.

Mr. Middleton: We would have to get it from Washington. We don't have anything but the attached copy.

Mr. Isseks: We have the notation here "3-22".

The Court: 625, let's get back to that.

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[fol. 4253] Q. Now, I show you Government's Exhibit 31, which is a memorandum prepared by Mr. Knox Smith of an interview with you, and direct your attention to the first paragraph where it is stated:

"As he" (referring to you) "had expressed some irritation over the telephone in regard to my letter to him, I asked him what the trouble was and found that he was a little suspicious about Section 11 of my memorandum to him of 3/21/22, paragraph 'd' thereof. He said it occurred to him possibly H-F was deliberately trying to set up a case against the Owens Company under the Sherman Law. I assured him no such thought had entered our minds and that nothing in any of these negotiations should be used in any such a way with outsiders."

[fol. 4254] I ask you whether the memorandum sets forth in substance what transpired at the conference you had with Mr. Knox Smith sometime in April, 1922.

A. I cannot recall that.

Q. You can neither affirm nor deny, is that right?

A. That is right.

Q. I show you Government's Exhibit 32, memorandum by Knox Smith of conference had with you on April 20, 1922, and ask you to read it, and tell us whether what is stated therein sets forth substantially what transpired at the conference?

A. My answer would be the same on this, Mr. Isseks, as I said to you last night.

Q. You can neither affirm nor deny what is set forth therein?

A. No.

The Court: I think we will suspend at this time for fifteen minutes.

(Short recess taken.)

[fol. 4255] Q. Mr. Blair, I show you Government's Exhibit 34, which is a letter dated April 22nd, 1922, addressed to you by Knox Smith. I direct your attention to the second page, first full paragraph, Mr. Knox Smith says, "There is another point which I think I ought to touch on. As we understand it, this arrangement will practically divide the industry, so far as our two companies are concerned, into two branches—the suction process branch controlled by Owens, and the gob feed branch controlled by H.-F. We both recognize that there is a distinct field for each of these processes. It would seem then to be the proper thing to let the two processes go along side by side, and each develop the proper field as the demand from the industry would naturally work it out. But, of course, we both also recognize that it would be unfortunate to have this parallel development of the two processes reach a stage where competition between the two became generally destructive and unstabilized. With this in view, we have accepted the proposition that restrictions tending to preserve stability shall be imposed, and, of course, it is just as important that the suction process and any future development of it, should not be used to unstabilize the industry, as it is that the gob process should not be used. I have tried to state this idea in Section 6 of the memorandum." I will ask you, Mr. Blair, whether the view expressed by Mr. Knox Smith was also the view expressed [fol. 4256] by you?

A. I could neither affirm nor deny it.

Q. Looking at the earlier part of the letter, Mr. Knox Smith refers to a memorandum which he says he enclosed,

and the part I just read refers to Section 6, and I show you Government's Exhibit 35, which is a memorandum dated 4-21-22, and direct your attention to Section No. 6 on Page 5, where Mr. Knox Smith says, "H-F shall restrict the issuance of further licenses in the container field in such manner, (to be defined more specifically later) as shall preserve the general principles of preventing over plant-investment and over-production, as well as keeping the licenses out of the hands of objectionable and irresponsible people. In like manner, Owens shall restrict the licensing of its suction feed and all developments thereof in such a way as to maintain a similar position." I will ask you, sir, whether that sets forth the attitude of the Owens people at that time?

A. I say I could not recall that. I could neither affirm nor deny it.

Q. Now I show you Government's Exhibit 609, a memorandum addressed to you by Mr. Carter, dated April 25th, 1922. You remember Mr. Carter, do you not?

A. Yes.

Q. I direct your attention to this memorandum, Government's Exhibit 609, in the first part where Mr. Carter says, [fol. 4257] "The most noticeable feature of this proposition is that it gives the feeder field entirely to H-F, and eliminates O-B completely from this field. In principle, H-F is the gob feed concern, and Owens the suction concern." Was that your understanding at that time of the proposed arrangement between Hartford and Owens, namely, that Hartford would get the gob feed and Owens retain suction feed?

A I could not recall that.

Q. You neither affirm nor deny it?

A. No.

Q. I show you Government's Exhibit 36, which is a memorandum of interview of April 26-27, 1922. This is dated April 28, 1922. Reference is made here to a conference which was had by Mr. Goodwin Smith and Knox Smith with you and Mr. Biggers, and it is stated—I direct your attention to page 2, paragraph 5, of this memorandum, where Mr. Knox Smith quotes you and states, "They", referring to you, "then modified considerably their previous position in several points, as follows: Blair said that they had such confidence in our conservatism and they were so anxious to prove to us that they had no intention of trying

to suppress the gob feed, they would give us full control over licensing of the gob feed; they agreed not to license their gob feed in competition." My question, sir, is whether your present recollection is Mr. Knox Smith was [fol. 4258] quoting you accurately?

A. I could not affirm nor deny it.

Q. Thank you. I now show you Government's Exhibit 38, which is a copy of a letter dated April 29, 1922, addressed to you, written by Mr. Herbert Knox Smith, coming from the Owens files. You will notice there is a reference to a memorandum here giving a general statement of the present position along the line we discussed last in New York. Reference is made to a memorandum attached, and I show you Government's Exhibit 37, which is signed by Herbert Knox Smith, dated April 27, 1922. It has been identified as the memorandum attached. Government's Exhibit 37 states at the top, "Points of Agreement". Now, going to page 2, paragraph 4, there is the following statement. "It is agreed in principle as follows: (a) That the Owens patents, particularly Lott, Bock and Brookfield, constitute a menace of greater or less degree to the H-F Company. (b) That Owens Company is able to contribute substantially to the maintenance of the patent monopoly on gob feed. (c) That H.-F's contribution to such maintenance will be greater than that of Owens Company. (5) That the commercial considerations involved in considering either an agreement or a conflict between Owens and H-F, are of greater importance than the relative patent values controlled by the two companies. By commercial considerations is meant the domination of outside feeders, the [fol. 4259] stabilization of the industry tending against irresponsible price cutting; the general cooperation between the gob and suction processes for an orderly development of the two side by side, such as will be most beneficial to the interests of the two companies and to the industry, and finally, the steadying influence that will be established in the machine side of the industry by a recognized cooperation between the two companies." My question is, sir, whether Mr. Knox Smith is correctly setting forth the point of the agreement between Owens and Hartford at that time?

A. I can't say at this time whether he stated it correctly or not.

Q. You neither affirm nor deny it?

A. No.

Q. I direct your attention to page 6, sir, where Mr. Knox Smith sets forth, in Exhibit 37, "Contributions by Owens Company", and he states these contributions are, "(a) Cooperation by Owens in releasing H-F patent claims for issue. H-F does not consider that this is of serious importance, as none of its inventions important to its commercial development are held up by patent interference with Owens Company. (b) Making possible the raise in the royalty rates. (c) Contributing to the control of the outside feeders, to the stabilization of the industry, and the [fol. 4260] establishment of a substantial monopoly over the gob feed process." My question is, sir, again, whether that sets forth your understanding of the arrangement as discussed between Hartford and Owens?

A. My answer is the same.

Q. Thank you, sir. I now show you Government's Exhibit 40, which is a letter addressed to you by Mr. Herbert Knox Smith, stipulated as genuine by Owens, and I direct your attention to the first sentence, "Our Board of Directors has carefully considered the plan which you submitted to Mr. Goodwin Smith and myself at New York on May 11th", and I show you Government's Exhibit 39, and I will ask you whether Government's Exhibit 39, which has been identified already by F. Goodwin Smith, is the letter that was handed by you and Mr. Biggers—is the document according to your recollection that was given to them as mentioned in Exhibit 40?

A. I could not affirm nor deny.

Q. I now show you Government's Exhibit 41, a letter dated May 26th, 1922, and ask you whether that is your signature?

A. Yes, sir, that is my signature.

Q. Will you look at it, sir? On the first page, third paragraph, you say, "Both groups seem to recognize the many advantages to be obtained from cooperative development of the feeder field. Also, it is admitted that independent development, with resultant competition, litiga- [fol. 4261] tion, et cetera, might be seriously detrimental to the interest of both companies. Hence it surely seems as though both of us should make maximum concessions in order to prevent a break in our present negotiations.

Therefore, if you will present a proposal somewhat more nearly in line with our known views than was your last proposal, we will be willing to consider it most seriously." You wrote that, did you not, sir?

A. Yes.

Q. I will direct your attention to the two paragraphs down on page 2. I will skip the next paragraph. "In regard to the segregation of the non-container field, on account of certain applications for association with us in the field of the Corning Glass Company, this phase of our negotiations takes on even greater importance than existed a month or two ago. We are also of the opinion that if it is intended that the Corning Company would have the exclusive rights in this field, it presents problems which I feel necessitate the prompt solution of our negotiations. We are familiar with the position of these applicants in this matter, and it is quite clear to us they will act more or less promptly either by securing the rights from us or seeking those rights from other plug feeders. We mention this on account of the great stress you put on this [fol. 4262] Corning situation, and it would be unfortunate, of course, if delay were to cause our company to feel the necessity of making an arrangement which might quite seriously embarrass our negotiations." You wrote that, did you not, sir?

A. I must have.

Q. Who were the applicants applying to Owens for rights in the Corning field?

A. I can't recall.

Q. There were some, were there not?

A. Apparently.

Q. Otherwise you would not have wrote it?

A. Probably I would not.

Q. By Corning field, what do you mean?

A. I think Corning were using the gob feeder for incandescent lamps.

Q. Bulbs, you mean?

A. Bulbs.

Q. Heat resisting ware?

A. Pyrex, yes.

Q. You understood Hartford had given an exclusive right in those fields to Corning?

A. Only that they stated so.

Q. And people in the glass industry applying to you for rights on your gob feed in connection with the same field of ware?

A. They must have been.

[fol. 4263] Q. Otherwise you would not write it?

A. I presume so.

Q. Hartford took the position you should not do it; you should come in with them?

A. I think Hartford put a lot of stress on their contract with the Corning Company, their relationship with the Corning Company.

Q. They told you, did they not, that Corning's interest indirectly controlled some 40 odd per cent of the stock of the Hartford Company?

A. They didn't tell me that.

Q. You knew four Corning directors were on the Board of Directors of Hartford?

A. No.

Q. Didn't you see any around?

A. No, unless you call Herbert Knox Smith one of them.

Mr. Wall: At this time that statement would not have been correct, in May of 1922. The Board was not organized.

* * * * * * *

[fol. 4264] Mr. Isseks: At this time I offer in evidence a letter dated June 1st, 1922, addressed to the Board of Directors of Owens, signed by Messrs. Blair and Biggers, stipulated as genuine by Owens at page 4 of the stipulation as Government's Exhibit 887.

The Court: It may be admitted.

Thereupon, Government's Exhibit 887 was read to the Court by Mr. Shields.

Q. Are you one of the writers of that letter?

A. Beg your pardon?

Q. You were one of the signers of that letter?

A. Apparently.

Mr. Isseks: At this time I offer as Government's Exhibit 888 a letter dated June 3rd, 1922, addressed to the witness, signed by Herbert Knox Smith, stipulated as genuine by Owens at page 3 of the Stipulation.

The Court: It may be admitted.

Thereupon, Government's Exhibit 888 was read to the Court by Mr. Kramer.

[fol. 4265] Q. At this time I show you Government's Exhibit 42, which is a memorandum dated June 15, of a conference which Mr. Knox Smith states he had with you and Mr. Biggers at the Ritz-Carlton on June 14, and direct your attention to paragraph 8 on page 3 thereof, which reads:

"Mr. Blair then referred to the subject-matter which he had briefly touched in his letter of May 26"—that, I tell you, is Government's Exhibit 41, asking for rights in the non-container field, which you identified before—"on the second page, as to the possible licensing by Owens of their form of the gob-feed process in the non-container field."—Mr. Knox Smith stating this,—"I said that this would raise a serious question with Corning, which we would have to settle one way or the other, because we had given Corning exclusive rights. He said that they had not concluded any deal but that they would have to say yes or no before long. I said that it might be possible that the deal which he proposed to make would not be objectionable to Corning; that I would have to put that up to Corning, and that in order to do so I ought to know something about the proposed deal. He did not want to go into details—the most he would say was that this proposed deal [fol. 4266] would give Corning a 'real competitor'. I said, 'I suppose you mean the bulb field.' He replied, 'It would give a real competitor in the non-container field.'"

And the words "non-container" are underscored in the exhibit. Does that memorandum refresh your recollection that you had a conversation in June, 1922, with Mr. Knox Smith about the non-container field?

A. I couldn't either affirm or deny it.

Q. Do you remember now who this proposed competitor for Corning in the bulb and other non-container field, was, that you had in mind at that time?

A. No, I do not.

Q. But in any event, Owens never did license anybody in the non-container field?

A. No, not while I was there.

Mr. Isseks: Now, at this time I offer as the next government's exhibit, a letter dated October 24, 1922, written to

Mr. E. M. Ashcraft, Jr., signed, apparently, by Mr. Biggers as vice-president and general manager, stipulated as genuine by Owens at page 3 of the stipulation. I would like to ask the witness whether he recognizes the handwriting on the second page, at the left-hand side?

A. I would not recognize it, except for the initials.

Q. Does the handwriting look like handwriting you have seen before?

A. Yes. I would say Mr. Biggers'.

Q. It looks like Mr. Biggers' handwriting?

[fol. 4267] A. Yes.

Mr. Isseks: I offer the document, including the handwriting. Government's Exhibit 889.

Mr. Wall: Is it offered for the limited purpose?

Mr. Isseks: Limited purpose.

The Court: It may be admitted.

(Government's Exhibit 889 read by Mr. Shields.)

Mr. Isseks: Your Honor, at this time I offer as Government's Exhibit 890 a letter written to Mr. Biggers on November 16, 1922, and signed "E. M. Ashcraft, Jr." stipulated as genuine by Owens-Illinois at page 3 of the stipulation.

Mr. Wall: Offering it, similarly, for limited purpose?

Mr. Isseks: For the limited purpose.

The Court: It may be admitted.

Mr. Isseks: May I ask the witness a question or two before I have it read?

Q. I show you the handwriting on the first page and ask you whether you can identify any of this? Does it look like any handwriting you are familiar with?

A. No, I don't recognize that.

Q. Look at the second page. There is some handwriting there.

A. Some of those letters look like Mr. Biggers'.

Q. In the notation?

A. Yes.

Q. How about the third page?

[fols. 4268-4270] A. I couldn't identify those.

Q. Does the same thing apply to the fourth page?

A. Certain letters look like his.

Q. And the fifth page?
A. I cannot identify that.

Mr. Isseks: I do not offer the handwriting, only the document.

(Government's Exhibit 890 read by Mr. Kramer.)

Mr. Middleton: May I inquire, Your Honor, the extent to which this exhibit is accepted? It was objected to. Written by Mr. Ashcraft, who was not in any way connected with any one of the defendants, but who was representing a company who was a licensee of Hartford, and, obviously, interested in his rights as a licensee. I take it this letter is not received as evidence of the truth of the statements insofar as the other defendants are concerned?

* * * * * * *

[fol. 4271] The Court: I think it ought to be received only for the purpose of expressing the views of Mr. Ashcraft at the time he wrote this letter.

Mr. Isseks: I defer to Your Honor's ruling.

The Court: You may suspend at that point.

(Noon Recess taken.)

[fol. 4272] (At 2 o'clock p. m., Tuesday, April 22, 1941, the hearing was resumed.)

The Court: Proceed.

Mr. Isseks: Your Honor, at this time I offer as Government's Exhibit 891, a group of papers all clipped together, the first is dated June 4, 1923, addressed to the board of directors of the Owens Bottle Company, signed J. C. Blair and J. D. Biggers and J. H. McNerney, on the left-hand side, all stipulated genuine. Then attached to it is a memorandum, one page, proposal to Hartford-Empire Company, New York, May 10, 1923; second attachment has on the top, "Comment on Hartford-Fairmont suggested basis of settlement which was submitted to Mr. Blair in New York May 4, 1923." The number of comments below correspond to the number of J. C. Blair's memorandum of his New York conference. Fourth attachment is conference between Hartford-Fairmont officials with Mr. Blair, held in New York. The four documents are stipulated as genuine by Owens-Illinois at page 4 of the stipulation.

Mr. Wall: For the limited purpose?

Mr. Isseks: For the limited purpose, that is right.
The Court: They may be admitted.

(First paper read by Mr. Kramer.)

Mr. Isseks: Before anything else is read I would like to ask the witness whether he and Mr. Biggers wrote the memorandum of June 4, 1923, to the board?
The Witness: The earlier part of that I seem to recall, [fols. 4273-4274] which was just before I went to Europe, and I considered that the negotiations were practically going to amount to nothing.

Q. You don't dispute you signed the memorandum?
A. No, I would not affirm or deny it.

Mr. Middleton: Might I interrupt the reading, to inquire with respect to the other three papers? My stipulation shows the stipulation as to this one letter of June 4, and makes no reference to the ones which are now attached to that.

* * * * * * *

[fol. 4275] Q. I am going to ask the witness to take the third piece of paper, where it says, "Hartford-Fairmont suggested basis of settlement, submitted to Mr. Blair in New York on May 4, 1923. The number of comments below correspond to the numbers of J. C. Blair's memorandums of his New York conference." And I ask you, sir, whether you wrote that memorandum?
A. I cannot affirm or deny it.
Q. Go to the last page. It says, "Conference between Hartford-Fairmont and Mr. Blair held in New York May 24, 1923," and I ask the same question.
A. Same answer.

Mr. Isseks: I offer only, at this time, the memorandum to the board of directors and the proposal. I withdraw the other two.
The Court: Very well.
Mr. Isseks: The first page has been read, all I will have read is the proposal.

(Read by Mr. Kramer.)

Q. Mr. Blair, I show you Government's Exhibit 612, which is a letter dated August 14, 1923, written to you in London, signed by Mr. Carter and identified by him, and I direct

your attention to paragraphs 28 and 29 of that letter, in which it is stated:

"I have not seen Belknap (C. B.) since his final meeting with Dorsey, on August 7th or 8th, but have had the following vague report as to that meeting. When the gen- [fol. 4276] eral nature of the new conditions suggested by Mr. Owens (Mr. Owens' name, however, not being mentioned) was presented by Belknap, Dorsey expressed the view that all would be subject to negotiation, except two or three points which were out of the question. One of these was the matter of Corning and Monongah royalties. It was not feasible to consider any change in these royalties as they involved the very basis of the Hartford organization."

(29) "Another was with regard to the proposed participation of Owens in the future conduct of the feeder business. As to any such arrangement, Dorsey would, in the first place, be in fear of the anti-trust laws, and in the second place, could see no basis of agreement between a company which must primarily regard the granting of licenses from the point of view of greatest possible income, and a company which, on the other hand, would primarily have in mind the effect of such licenses on competition."

I ask you whether that letter, and particularly those two paragraphs, were called to your attention on or about the date or shortly after it was written, August 14, 1923?

A. I don't recall, Mr. Isseks.

Q. You won't affirm or deny it?

A. No, sir.

[fol. 4277] Mr. Isseks: At this time I offer in evidence as the next government's exhibit, memorandum dated October 10, 1923, written to the board of directors of the Owens Bottle Company, not stipulated, but bears the stamp of Mr. Martin.

Mr. Wall: Also for the same limited purpose?

Q. I ask the witness whether he wrote it.

A. I cannot answer that, either. My signature isn't there.

Q. Would you deny you wrote it?

A. No.

Mr. Middleton: We will concede this document came out of our files.

The Court: Very well.

Mr. Middleton: We concede the authenticity of it.

Mr. Isseks: I offer it in evidence.

Mr. Wall: For the same limited purpose?

Mr. Isseks: It is.

The Court: Proceed.

(Government's Exhibit 892 read by Mr. Shields.)

Mr. Middleton: May we comment, to keep the record clear, that these provisions were superseded later by the provisions which were eventually carried into the contract; this is merely the negotiating stage.

Q. Mr. Blair, what were the nature of Mr. Carter's duties in 1923 while you were still with the company?

A. He was in the patent department.

Q. He was following these lawsuits?

[fol. 4278] A. I assume he was.

Q. And also any interference proceedings regarding the gob-feeding patents which your company had?

A. I cannot answer to that.

Q. Did you confer with him about these matters from time to time?

A. I asked him questions.

Q. He talked to you and you talked to him about it, did you not?

A. Yes.

Q. I show you Government's Exhibit 611, dated November 7, 1923, written by Mr. Carter, and identified by him, and I direct your attention to what he says in the first two paragraphs:

"I have this morning discussed with Mr. Blair (and, by his request, with Mr. Owens,) the question of whether or not we should be prepared to sacrifice, if necessary, our chances of obtaining a recovery under Brookfield, in order to improve our chances of obtaining an injunction under Lott.

"I quoted Mr. Davis as pointing out that it was difficult to make the most out of Brookfield without greatly restricting the field of invention left to Lott, or to say all that could be said for Lott, without putting the soft pedal on as to Brookfield to such an extent, perhaps, as to greatly re-

[fol. 4279] duce our chances of a recovery under Brookfield.

"Also, that if we present a limited interpretation of Brookfield, with a view to securing a more liberal view of Lott, we might fall between the two and lose out altogether.

"I also explain that our asking the court for a limited interpretation of Brookfield might result in reducing the usefulness of Brookfield as an anticipation of Hartford's pending claims, relating to suspended gob, shaping of gob, timing, etc., both in the present interference proceedings and in subsequent litigation on these claims, if Hartford succeeds in patenting them.

"To the above inquiry, Mr. Owens and Mr. Blair separately replied, without hesitation, that in their judgment it should be the policy to make all out of Lott that is possible, no matter to what extent this may involve sacrificing chances of recovery under Brookfield,—that the primary object which this company had in view, was the patent control of the feeder field for a term of years, and that in comparison with this, any possible money judgment (even of a million or more) should be regarded as distinctly secondary.

"They even stated, as their view, that the advantage of having the feeder field under some patent control is so [fol. 4280] great, from a business standpoint, that this company would rather see such control in the hands of Hartford than to have the field open—that consequently if we should lose out on Lott, we would have no interest in holding Hartford in the Patent Office by interference proceedings, or in defeating Hartford's claims in court—that our interest would rather be in aiding Hartford to maintain its control, than to narrow or defeat its patents, or delay their issue."

Q. I ask you, sir, was Mr. Carter setting forth, in substance, the statements you made to him about that time?

A. I would neither confirm it or deny it.

Q. Did Mr. Owens make similar statements to you, sir?

A. If he did, I don't recall.

Q. I hand you Government's Exhibit 52, which is a letter from Mr. Dorsey, dated January 21, 1924, to Mr. F. Goodwin Smith, and before I ask any questions about it, did you meet Mr. Dorsey sometime in the early part of 1924 in connection with these negotiations?

A. I met him once or twice, I don't remember where it was.

Q. I show you this letter, supposed to be a summary of a conversation which Mr. Dorsey had with you at the Secor Hotel in Toledo, at which Mr. C. B. Belknap was present; do you remember that?

A. You mean do I remember specifically——

Q. Do you remember where it was?

[fol. 4281] A. I don't remember where it was. I remember there was a conference.

Q. Later on it says they went on to the Owens' office, as Mr. Wall points out. Perhaps you ought to read the first paragraph, perhaps it will refresh your recollection as to whether you and Mr. Belknap saw Mr. Dorsey at the Secor, then at the Owens office.

The Court: What document is this?

Mr. Isseks: Government's Exhibit 52.

A. How much of the first page do you want me to read?

Q. Read the first paragraph and see if that refreshes your recollection.

A. I said I recall meeting him someplace.

Q. Go to the second page, toward the bottom of the page, where it says:

"Blair on his side said"—and then skip to "B"—"He was insistent on license control. To meet my arguments that restrictions as to licenses would necessarily keep down increase of Hartford-Empire's income, he expressed a willingness to consider a loosening of these restrictions as previously drafter and insisted on by them."

I ask you whether Mr. Dorsey is setting forth, in substance, the position taken by you in behalf of Owens in the early part of 1924.

A. I cannot be specific about that.

Q. You won't affirm or deny it, is that right?

[fol. 4282] A. That is right.

Mr. Isseks: At this time I offer as the next government's exhibit, memorandum dated March 17, 1924, addressed to the executive committee of the Owens Bottle Company, signed "H. H. Baker", stipulated as genuine by Owens-Illinois as page 4. I will point out it is offered for the limited purpose.

The Court: Very well.

Mr. Isseks: I offer it in evidence.

The Court: It may be admitted.

(Government's Exhibit 393 read.)

[fol. 4283] Q. Mr. Blair, there is reference to attitude that you took at that time in connection with the proposed agreement. Does that memorandum of Messrs. Biggers and Baker set forth your position?

A. I can't be certain on that. It is approaching the basis of a final settlement, that seems to be apparent, which I did approve.

Q. More specifically, it is stated in the second full paragraph on the second page of the original memorandum, "He feels that if a settlement is made the competitive situation will not be cleared up, but we will get royalty which in a manner is leeway from a competitive standpoint." Does that express your view at that time?

A. I can't recall whether it does not not.

Q. You neither affirm nor deny it?

A. No.

Mr. Isseks: At this time I offer in evidence Government's Exhibit 394, a memorandum dated April 9, 1924, addressed to the Board of Directors, Owens Bottle Company, signed by the witness. It is not stipulated but it has a certificate on it. Any question about the authenticity?

Mr. Wood: No.

Mr. Isseks: I offer it in evidence, Your Honor.

The Court: It may be admitted.

(Thereupon, Government's Exhibit 394 was read to the Court by Mr. Apsey, of counsel for the government.)

[fol. 4284] Q. Did you sign that, sir?

A. It sounds like the last agreement, yes.

Mr. Wall: If Your Honor please, I mention—I assume that was merely an intra-corporate act of the Owens Company and not a constructional contract.

The Court: I assume so.

Mr. Isseks: No further questions, Your Honor.

Cross-examination.

By Mr. Wood:

Q. Mr. Blair, I believe you stated you particularly remember the report which you made to the Board of Direc-

tors of the Owens Bottle Company on June 4th, 1923, is that correct?

A. I think I said it is just prior to my going to Europe, and my impression at that time was that these negotiations were going to end in a deadlock and not accomplish anything, and I think I advised the Board we should proceed with our lawsuit.

Q. Do you remember what patents were involved in the lawsuit?

A. I don't know as I can recall that. It seems to me that the Lott Patent was our more valuable patent, although there were two others, Brookfield, and I think still one other I don't remember.

Q. Did your company pursue that lawsuit vigorously?

A. I was out of the country for over three months. I can't recall definitely about that but I would think that we [fol. 4285] did. We did it with the intention of pursuing it anyway.

Q. Did you direct your attorneys to push the case to trial?

A. I would not ask them to start the suit if I had not.

Q. Did you yourself feel you had a strong position on the Lott Patent?

A. I had more confidence in our ability to at least stop the other plug feeding operations.

Q. Did Mr. C. B. Belknap share that view, as you remember it?

A. Yes, I think he did. I think both he and his brother both did.

Q. Do you remember whether Mr. Carter shared that view?

A. I think Mr. Carter changed his opinion pretty frequently. I would be inclined to think that he probably was the weakest of all those that I conferred with—the weakest in support of the value of these patents.

Q. You mean in respect to his confidence in the Lott patents?

A. Yes.

Q. Now, can you remember what significance you and your associates attached to the Lott patents at the time?

A. You mean the significance of the ability to control this field?

Q. Yes.

A. I think I have already stated that we thought as a

minimum we could at least stop others from using the gob and plug feeder.

[fol. 4286] Q. You mean stop that by decree in Federal Court?

A. Infringement.

Q. By decree in Federal Court?

A. Right.

Q. Now back in the early 1920's or the late tens or whenever you came into the glass industry——

A. What was your date?

Q. Back in the early '20's or late tens, or whenever you came into the glass industry, did you ever hear the phrase commonly used, "The Owens' monopoly," or a similar phrase?

A. In respect to the Owens machine, yes. I think in respect to the suction machine.

Q. I was going to ask you the meaning of that phrase as it was used in the industry during that period?

A. The phrase "monopoly"?

Q. The Owens monopoly?

A. It would have referred to their suction machines which at that time as far as I recall was the only automatic device for making bottles.

Q. And that was covered by patents, was it not?

A. Oh, yes, yes.

Q. It meant the Owens patent monopoly on its suction machines at that time?

A. Yes.

The Court: Anything from any of the other counsel for defense?

[fol. 4287] Cross examination.

By Mr. Wall:

Q. Mr. Blair, at the time you were negotiating with Hartford in 1922 was Owens still in the business of giving licenses on its suction machine?

A. No.

Q. While you were with the company did it give licenses on any plug feeders, so-called, or feeding devices?

A. None that I recall.

Q. The business of the Owens Bottle Company at that time was the manufacturing of glass articles, is that right?

A. And collection of royalties under previous licenses granted under the suction machine.

Q. What fields was Owens engaged in in manufacturing?

A. In prescription ware, condiment ware, propriety ware. I think that covers it.

Q. Were you in the bulb business or hard glass business?

A. No.

Q. Were you trying to get into it at that time?

A. As a company?

Q. Yes.

A. I think we might have done something of that kind if these negotiations had not turned out satisfactory.

Q. Were you actively engaged in the manufacture of Pyrex or bulbs?

A. No.

Q. Did you have the Westlake patents?

A. They belonged to the Libbey Glass Company.

[fol. 4288] Q. Did you have a license under them?

A. I think not.

Q. Now you said I believe that Mr. Libbey and Mr. Owens took part in some of these negotiations?

A. Mr. Libbey attended the first one that I attended in December, 1921.

Q. Mr. Owens also?

A. Yes.

Q. Did Mr. Owens later attend some other conferences?

A. I think he had been to several—two or three possibly.

Q. Both of those men were men of mature years and of great experience in the glass business, weren't they?

A. They have been in it all their lives.

Q. Who else took part in the negotiations with Mr. Biggers and you?

A. At different times there were a number of them that at least were present, whether they took active part in the negotiation I could not say. As I say, Mr. Owens was present at a time or two or three, and Mr. Biggers, and I think Mr. Lloyd Williams sat in two or three times.

Q. Your company had acquired the Lott patents by assignment from Mr. Lott, hadn't it?

A. I believe so.

Q. You felt in 1921 and '22 that you had some patents of great potential value in the Lott patents?

A. Personally I did.

Q. By the way, you were vice-president and general [fol. 4289] manager also at that time?

A. Yes.

Q. And you wanted to realize on the potential value of the Lott patents by disposing to some people of the use of them?

A. Yes.

Q. Was it for that purpose that you conducted negotiations with Hartford?

A. Yes.

Q. Naturally I suppose it was your intention to make just as good a deal as could be made for the company which you represented?

A. Right.

Q. Did you follow the negotiations through until the consummation of the contract with that in mind and with that object?

A. Yes.

Q. Certainly you never told any of the Hartford representatives that you were in doubt as to whether you wanted that suit to be tried, did you?

A. I think they very definitely knew it to be the other way.

Q. Did you tell that to Mr. Dorsey, do you remember, when he came here in January?

A. Yes. I think Mr. Dorsey very definitely got that impression.

Q. In other words, you were polite but cold to him?

A. That is what he said.

[fol. 4290] Q. But that was your position with other Hartford representatives?

A. All the time.

Q. All the time?

A. Yes.

Mr. Wall: That is all.

Cross examination.

By Mr. Philbin:

Q. During the negotiations in 1922 and 1923 between the Owens Bottle Company in which you participated for the Owens Company and the Hartford Company, were there many discussions between you on one side for the Owens

Company, and either Mr. Herbert Knox Smith or Mr. F. Goodwin Smith for the Hartford Company?

A. Were there many you say—yes, at all those meetings.

Q. You had a great many meetings, a great many discussions and a great many negotiations?

A. Yes, a great many points brought up and discussed, and investigated and brought out.

Q. Did either Mr. F. Goodwin Smith or Mr. Herbert Knox Smith ever make any memorandum of the things that were said at those conferences and send such memorandum to you?

A. I think practically after every conference Mr. Herbert Knox Smith sent the memorandum.

Q. Did the memorandum, or some at least of the memoranda, that he sent to you purporting to represent what was said at the meeting with respect to your position and with respect to his position, did those memoranda always [fol. 4291] agree with what your recollection was?

A. On the contrary, much more often did not agree.

Q. Were there frequent, many misunderstandings between you and Mr. Herbert Knox Smith as to what had occurred at various meetings during these negotiations?

A. Yes, and it was the cause of so much delay in the final negotiation.

Mr. Philbin: That is all.

The Court: Anything further?

Mr. Isseks: No questions.

The Court: That will be all. Call your next witness.

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Thereupon, the government called as a witness, H. H. Baker, who, being first duly sworn, testified as follows:

Direct examination.

By Mr. Isseks:

Q. Mr. Baker, what is your present business?

A. Vice-president and secretary of Libbey-Owens-Ford Glass Company.

Q. How long have you been with that company?

A. About fifteen years.

Q. Prior to that time, that is about 1926, with what company were you connected?

A. I was treasurer of the Owens Bottle Company.

Q. How long were you connected with the Owens Bottle Company?

A. Nearly ten years.

[fol. 4292] Mr. Isseks: At this time, Your Honor, I offer the next government's exhibit entitled, "Possible Benefits to be Acquired by the Acquisition of 51 per cent of the Maryland Glass Corporation," signed by W. F. W. and H. H. B., dated 5-29-20, marked Government's Exhibit 895, stipulated as genuine by Owens at page 23.

* * * * * * *

The Court: It may be admitted.

Thereupon, Government's Exhibit 895 was read to the Court by Mr. Shields.

[fol. 4293] Q. Mr. Baker, are you one of the authors of that memorandum?

A. I don't know. This would indicate it but I don't recall it.

Q. You would not deny it though?

A. No.

Q. Those are your initials?

A. Yes.

Q. At that time you were treasurer of the company?

A. Yes.

Q. Who was the gentleman with the initials W. S. W.?

A. William S. Walbridge.

Q. What was his position with the company at that time?

A. At that time I think he was vice-president.

Q. I hand you a document that has been marked Government's Exhibit 896 for identification, and ask you whether that is your handwriting at the bottom?

A. No, it is not.

Q. Are those your initials?

A. Yes.

Q. I will ask you if that is your handwriting in the right hand corner?

A. I don't think so.

Q. Does it look like your handwriting?

A. It might be, but I am not at all sure.

Q. I will ask you to read that document and tell us whether you wrote it? Did you write it?

A. I don't think so.

[fol. 4294] Q. Is that your handwriting here?

A. I really don't know.

Q. You specifically say you did not write it?

A. No, I can't specifically say so but it is something I can't recognize whether it is mine or not. It is so small.

Q. What about the entire memorandum?

A. I don't think I wrote it. It is not dated and I don't recall addressing a letter, "My dear Mr. Owens." It doesn't sound like me. I don't think I would say to Mr. Owens what that last sentence says. I don't deny I wrote it but I don't believe I did.

Mr. Isseks: I am not going to offer it in evidence. I am just going to let the number there. I am not interested in the document if I can't find out who wrote it.

I now offer in evidence the next Government's exhibit, 897, memorandum which says on it, "Libbey-Owens Sheet Glass Company, Nicholas Building, Toledo, Ohio," dated April 28, 1922, memorandum to Mr. Baker signed C. A. Rowley. There is a stamp on it, stipulated as genuine by Owens-Illinois.

Mr. Middleton: There is an objection, Your Honor.

The Court: Is this 896?

Mr. Isseks: 897. 896 is the document I marked but I can't find the author. 897 is stipulated as genuine by [fol. 4295] Owens.

Mr. Wall: Note our same objection as to the last one.

The Court: It may be admitted.

Mr. Isseks: They are offered for the limited purpose.

(Thereupon, Government's Exhibit 897 was read to the Court.)

[fol. 4296] Q. I ask the witness who Mr. C. A. Rowley was at that time?

A. He was a patent attorney, or head of the patent department of the Libbey-Owens Company.

Q. What was your position at that time with the Owens Company?

A. What was the date?

Q. April 28, 1922.

A. I was treasurer of the Owens Bottle Company.

Q. Were you also connected with the Libbey-Owens Sheet Glass Company?

A. Yes.

Q. I ask you whether you received this memorandum, which has been stipulated as genuine? Perhaps you remember receiving it.

A. I have no recollection of receiving it.

Q. You would not deny it?

A. No, sir.

Mr. Isaacs: I offer it in evidence, Your Honor.

Mr. Middleton: Objection.

* * * * * * *

[fol. 4297] The Court: No; I think I will refuse it.

* * * * * * *

[fol. 4298] Q. I show you Government's Exhibit 396, which is a letter addressed to you from Mr. F. Goodwin Smith, and ask you whether you received it in the regular course of business.

A. I don't recall it at all but I very likely received it, since it is addressed to me.

Q. I show you Governments' Exhibit 397, and ask you whether that is not your signature on there?

A. Yes, sir.

Q. And you wrote that letter in reply to Government's Exhibit 396, did you not?

[fol. 4299] A. Apparently, yes, sir.

Q. And in there you refer to extending the right to license Corning to make blown bottles at certain periods. I direct your attention to the last paragraph:

"As to extending the right to license Corning to make blown bottles at certain periods if you see fit, we would prefer not to grant such a general license but when and if Corning makes a request for a license to manufacture that kind of ware, we would be very pleased to discuss the question with you."

You wrote that, did you not?

A. Apparently, yes, sir.

Q. You sent a copy to Mr. Falck, did you not?

A. No. That must have gone from Hartford. That is not in my handwriting.

Q. You were familiar, were you not, with Section 22 of the April 9, 1924, contract?

A. You say I am or I was?

Q. Were you, at the time?

A. I presume so, but I have no idea what it is about; no.

Q. Didn't you know, as treasurer of the company, your company had a veto power under certain circumstances as to when anybody could manufacture certain types of glassware?

A. I presume I did then, if it is in there, but I don't recall the section.

Q. Did you know your company had a veto power?

A. I don't recall it.

[fol. 4300] Q. Under what authority did you write this letter, Government's Exhibit 397, with regard to an extension of right to Corning?

A. I presume I wrote it because he asked me whether we had any objection, and we apparently did.

Q. What basis did you have for an objection at the time?

A. I don't recall that.

Q. Your mind is a complete blank as to what happened?

A. Absolutely, on that; yes, sir.

Q. Never heard of Section 22 of the April 9, 1924, contract?

A. I must have heard of it, but I don't recall it, at all, now.

The Court: Show the witness the section.

Mr. Isseks: May we have the contract?

Q. I show you Government's Exhibit 55, which is a contract dated April 9, 1924, between Owens Bottle Company on the one hand and various of its associated and affiliated companies, and Hartford-Empire and Hartford-Fairmont, and I direct your attention to the fact you signed the contract,—rather attested to Mr. Boshart's signature?

A. Yes, sir.

Q. That is your signature?

A. Yes, sir.

Q. I show you Section 22 of the contract, and ask you whether you were familiar with it while you were treasurer of the Owens Bottle Company, and ask you to read it.

A. I presume I must have been familiar with it, yes, sir.

Q. Does the reading of it refresh your recollection at all?

[fol. 4301] A. No, sir, it really does not.

Q. Isn't it a fact you discussed this subject-matter of Section 22 while you were treasurer of the Owens Bottle

Company for a number of years after the contract was signed?

A. No, I may have but I cannot recall it now; that is quite a while ago.

Q. Are you nervous right now?

A. No, sir.

Q. Anything wrong with your memory?

Mr. Middleton: I object. The gentleman is an executive of a different company, has had nothing to do with this company for many years.

The Court: Objection overruled.

Q. Anything wrong with your memory?

A. Not that I know of.

Q. I now show you Government's Exhibit 122, which is a letter dated June 16, 1924, addressed to you as treasurer of the Owens Bottle Company, by Herbert Knox Smith. You knew Herbert Knox Smith?

A. Yes, I did.

Q. You saw him?

A. Yes, sir.

Q. More than once?

A. Yes, sir.

Q. Talked with him at various times?

A. Yes, sir.

Q. It says here,—this is a letter to you,—

[fol. 4302] "Your telegram of the 11th inst. was received by Mr. Goodwin Smith as follows:

'Blair saw Brady Monday. Hazel it apparently in frame of mind to favorably consider license as contained in option (Stop) Brady wants three things. First. Copy Hartford-Owens agreement. Second. Statement regarding features in interference. And third. Statement regarding patent protection he would be getting if he agreed to license (Stop) Belknap expects to see Dorsey Friday. We will not give Brady information requested without Dorsey's approval.'"

Remember that telegram, or something like it?

A. No, sir.

Q. Complete blank?

A. Yes, sir.

Q. Thank you. See if I can refresh your recollection, by the rest of it:

"Taking up the first point, namely, Mr. Brady's request for a copy of the Hartford-Owens agreement—as we look at it now, we would be quite reluctant to have a copy of that agreement either shown or given to Mr. Brady or the Hazel-Atlas Company, because in the first place, the great bulk of it relates to matters which have no bearing at all on [fol. 4303] Hazel-Atlas, and, secondly, every time this contract or any part thereof is given out to anyone, it means the probable starting of a lot of rumors and talk such as you are quite familiar with in the glass industry and usually having about ten per cent mixture of truth.

"I have gone over the Hartford-Owens agreement in comparison with the proposed license to Hazel-Atlas (which, of course, Mr. Brady has) and I have made a schedule of the sections of the Hartford-Owens agreement which do not appear substantially or in some corresponding form in the Hazel-Atlas license, as follows:

"Preamble; describing 'named subsidiaries'.

"1 C. H-E income from licensed inventions; divisble income of H-E; defines license fee and royalty; defines containers; 40-unit provisions; royalty payable by H-E; status after 1941; prosecution of infringement; manufacturing by H-E; surrender of license by Owens; division of certain recoveries; payments considered royalties; voting stock; Owens' licensees—fields of ware; Owens' licensees—royalties; joint purchase of outside rights; licensing restrictions; as to specified machines; disclosure of inventions; amend-[fol. 4304] ments; covenants of title; Owens' royalties on licensed inventions.

"The mere statement of these headings speaks for itself, it seems to me, on this question, in most cases. For instance, there is no reason whatsoever that Hazel-Atlas or any other outsider should be informed of the arrangement between our two companies as to the division of income or as to the 40 units or as to a number of other things."

Q. I ask you whether the letter was brought to your attention after you received it?

A. Whether what?

Q. Whether the letter was brought to your attention after it was received by your company?

A. I presume it was given to me.

Q. Do you remember it at all?

A. No, I cannot recall it.

Q. Don't you remember you were trying to get Hazel-Atlas to take a license?

A. No, I don't believe I do.

Q. Don't remember any discussion about trying to get Hazel-Atlas to take a license?

A. I remember there was some discussion; what it was I don't recall.

Q. You do remember Hazel-Atlas was not a licensee of Hartford while you were with Owens?

A. That is right.

[fol. 4305] Q. You do know there was an effort on the part of Owens and Hartford to get Hazel-Atlas to take a license?

A. I believe there was.

Q. Isn't it a fact somebody talked to Mr. Brady and he said before he would take a license he wanted to see a copy of the Hartford-Owens contract?

A. I believe that is indicated in the telegram right here.

Q. You don't dispute it?

A. No.

Q. Now, shortly thereafter did you have a conference with Mr. Heintzelman, who was a director of Hartford and also executive head of the Monongah Glass Company, with regard to the possibility of getting Hazel-Atlas to take a license from Hartford?

A. I don't ever remember having met Mr. Heintzelman. I may have, but I don't recall it.

Q. I show you a letter dated June 19, 1924, and addressed to Mr. F. Goodwin Smith, signed by Mr. Heintzelman, and I am directing your attention to the first full paragraph in view of your answer:

"Bob," he says,—I think that means Mr. Cunningham, I think he has been identified—"and I were in Toledo yesterday, and met Mr. Baker at 10 a. m. and he called in Mr. Walbridge. I discussed with these gentlemen the matter we have under consideration for a little while, and, then, Mr. Walbridge suggested that Mr. Baker get Mr. Biggers and Mr. Boshart into the conference."

[fol. 4306] A. I must have met him then, but I don't recall him.

Q. You don't dispute it?

A. No, sir.

Q. Do you remember part of the conference—I direct your attention to the second paragraph, relating to the effort to get Hazel-Atlas to come in as a licensee?

A. No, sir.

Q. Isn't it a fact that at that time your company had a stock interest in Hazel-Atlas? And by "your company" I mean Owens Bottle Company.

A. We did at one time. I don't know when it was sold, whether prior or after; it must have been after this. We had a stock interest at that time.

Q. How much was that stock interest, approximately?

A. All I can say it was several thousand shares.

Q. It was about 30%?

A. I don't recall the percentage.

Q. It was a substantial block?

A. Yes, I think so.

Q. As a matter of fact, some of the Owens directors were directors of Hazel-Atlas?

A. Yes.

Q. Mr. Biggers was a director of both companies?

A. I think so.

Q. Anybody else?

A. I think different members of the Owens board were members of the Hazel board at different times.

[fol. 4307] Q. That was why Hartford thought you might be in position to get Hazel-Atlas——

Mr. Middleton: I object.

Mr. Isseks: Excuse me, I started a question.

(Previous question read.)

Q. (Cont'd.) —to come in as a licensee; isn't that a fact?

Mr. Middleton: Object to the form of the question. It calls for a conclusion of the witness.

The Court: Yes, I think that is so.

Q. Isn't it a fact, Mr. Baker, that your stock interest and directorate interest in Hazel-Atlas was one of the considerations taken into account by your company in trying to get Hazel-Atlas to take a license from Hartford?

A. I don't recall that at all.

Q. Do you remember trying to get Hazel-Atlas to take a license?

A. No, I do not.

Q. Don't remember it at all?

A. No.

Q. I direct your attention to the second full paragraph of Government's Exhibit 123, which you have in your hand, in which Mr. Heintzelman said:

"I opened the discussion by saying that we were there primarily to talk over with them the question of Hazel-Atlas Glass Company coming in under Hartford license on the same basis as Monongah Glass Company; and that the [fol. 4308] question of 'royalty' that Hazel-Atlas and Monongah should pay is of vital interest to us."

Do you remember that?

A. I really seem to remember nothing about this meeting and the endeavor to get Hazel-Atlas in.

Q. See if I can refresh your recollection.

(Mr. Heintzelman) "I explained that the amount of royalty paid was not so material so long as it was within reason, provided we had some way to get it back, but that my experience was that Hazel-Atlas was not inclined to get big prices for their product, and I enumerated a number of cases to illustrate this. I soon found out that they knew about as much regarding Hazel-Atlas' business methods as I did and that they had been continually endeavoring to get them to change their policy, but that heretofore their representation on the Hazel-Atlas board did not mean anything, as Mr. Brady had been inclined to dominate the policy and had gotten away with it."

Does that refresh your recollection?

A. Not a bit. It must have been Mr. Walbridge he is referring to when he says they seemed to know as much about it as he did, because I knew nothing about Hazel-Atlas' policy.

Q. Turn over to the next page, the second full paragraph:

"I asked Mr. Baker if he had any objections to my meet-[fol. 4309] ing Mr. Brady for the purpose of discussing with him the question of the Hartford-Empire license to them and the question of royalty. He said that, so far as he was concerned, he could see no objection if it was satisfactory to you. I really felt that, if we are to be together and working under the same conditions as to royalty pay-

ment, we should have a conference, and that at this same conference I would be in position to sound out Mr. Brady as to what their future policy is going to be with reference to the sale of their product."

Does that refresh your recollection?

A. No, sir; I am sorry, it does not.

The Court: I think you may suspend at that time and the bailiff may recess for fifteen minutes.

(Recess taken.)

[fol. 4310] The Court: Proceed.

Q. After the April 9, 1924, contract, were you informed that the lawyers for Hartford and the lawyers for Owens were having a conference with regard to various procedure steps to take against outsiders?

A. I probably was. I can't recall it now.

Q. I show you Government's Exhibit 619, which is a memorandum addressed to you by Mr. Carter, subject, Washington Conference with Hartford on feeder-litigation and interferences. I will ask you if that is your initials in the upper left hand corner?

A. Yes.

Q. You wrote that yourself?

A. I would think so.

Q. Are the words "File" in your handwriting too?

A. Yes.

Mr. Isseks: This memorandum relates to a conference in Washington, and I am not going to interrogate the witness about it except to call it to his attention.

At this time I offer next Government's Exhibit 898, a letter dated November 3rd, 1924, re "Whitall-Tatum Prpposition", addressed to the witness as treasurer of the Owens Bottle Company, signed F. Goodwin Smith, stipulated as genuine by Hartford on page 9 of the Stipulation. I offer it in evidence.

[fol. 4311] The Court: It may be admitted.

Thereupon, Government's Exhibit 898 was read to the Court by Mr. Lewis.

Q. The question is, sir, whether you received that letter during the regular course of business?

A. I presume so, but I don't recall.

Q. I show you Government's Exhibit 301, which is a letter dated January 9th, 1925, addressed to the Executive Committee of the Owens Bottle Company, stipulated as genuine by Owens, purported to be signed by you, and I direct your attention to the third full paragraph of that exhibit where it is stated, "At a meeting held in New York on January 2nd and 3rd, at which Hartford, Whitall-Tatum, and ourselves were represented, an agreement acceptable to those present was reached, the principal features of which are as follows",—then you have a paragraph and you have an Item 1. "(1) Owens and Hartford will withdraw opposition to Whitall-Tatum's application, so that the matter may be issued with as broad claims as possible". You wrote that, did you not, sir?

A. Apparently.

Q. You recall, do you not, that your company paid one-half of the Whitall-Tatum option price?

A. I can't recall that.

Q. I will direct your attention to paragraph 7, "During the option period the Hartford Company agrees to pay Whitall-Tatum $20,000, per year and Owens Bottle must [fol. 4312] bear one-half of this expense". That is right, isn't it?

A. Apparently.

Mr. Isseks: I offer at this time a memorandum addressed to the Executive Committee of the Owens Bottle Company dated January 10th, 1925, signed by H. H. Baker, and also signed by J. H. McNerney, assistant secretary. It is stipulated as genuine by Owens-Illinois at page 4 of the Stipulation. This is Government's Exhibit 899.

The Court: It may be admitted.

Thereupon, Government's Exhibit 899 was read to the Court by Mr. Shields.

Q. Mr. Baker, the Sears and Lobb Machine applications for forming machines were different than Headley & Thompson, weren't they?

A. I could not say.

Q. They were decidedly different?

Mr. Middleton: I object.

Mr. Isseks: I don't mean construction.

As far as you know Sears and Lobb had nothing to do with Whitall-Tatum?

A. So far as I know.

Q. So far as you know, Messrs. Sears and Lobb had nothing to do with Headley & Thompson?

A. So far as I know now they had nothing to do with it.

Q. They were different people. Do you know who they [fol. 4313] were connected with, Messrs. Sears and Lobb?

A. No.

Q. Messrs. Headley and Thompson were connected with Whitall-Tatum?

A. Yes.

Mr. Isseks: At this time I offer the next government's exhibit. It is Exhibit No. 900, memorandum dated January 22nd, 1925, addressed to the Board of Directors of the Owens Bottle Company, signed by the witness and J. H. McNerney, stipulated by Owens-Illinois at page 4 of the Stipulation.

The Court: It may be admitted.

Thereupon, Government's Exhibit No. 900 was read to the Court by Mr. Apsey.

Q. You wrote that, sir, did you not?

A. Presumably.

Q. Now, after the April 9th, 1924, contract was executed was there any discussion between you and other executives on behalf of Owens and Hartford with regard to the Miller feeders?

A. I think so.

Q. What is your present recollection about those discussions?

A. I don't recall any details. I just know they were discussed and led up to some negotiations.

Q. Then what happened after the negotiations?

A. I think that Owens acquired the patents on the Miller [fol. 4314] machine later on.

Q. Owens and Hartford you mean?

A. I presume so. I guess it was, yes.

Q. I am talking about William J. Miller, not Ed. Miller. Ed. Miller was a forming machine manufacturer in Columbus, is that right?

A. Yes.

Q. And Mr. William J. Miller was a feeder manufacturer in Swissville, Pennsylvania?

A. Yes.

Q. I am talking about William Miller. Do you understand that?

A. Yes, but I don't know whether I did when I answered your question.

Q. Remember, now I am talking about William Miller. I am directing your attention to Government's Exhibit 65, a telegram which was sent to you by F. Goodwin Smith, dated January 26th, 1925, "Belknap's Miller Pittsburgh letter received. If we get only applications and stoppage of his manufacture while we waive past damages and cannot sue any Miller feeder user, there is nothing in it. Believe Miller would furnish selected list of users not to be sued. We could then take six months option to determine whether the selected users would take license from us. Think many Miller feeders sold outright without further responsibility. If we could sue this, it might be sufficient. [fol. 4315] Please send copies of Miller's agreements, also your ideas. Would not care make any proposition until we have fully conferred with you and decide definite policy". My question, sir, is whether you received that telegram in the regular course of business?

A. I can't say I did not, but I presume I did.

Q. I show you a reply dated January 27th, 1925, Government's Exhibit 66, reading, "Belknap and Carter here. Miller states he has only seven feeders under license. Complete list of 34 firms who operate 106 Miller feeders has been mailed to you. Miller's proposal unacceptable but we suggest the following: 1. File suit against Miller immediately. 2. Advise Miller we will waive recovery for past infringement against himself, Miller Engineering Company, and his users and licensees providing: (a) Consent decree to be entered against Miller and Miller Engineering Company, (b) All Miller users and licensees to take license from Hartford at standard rates. (d) All Miller patents and applications on plunger feeders to be turned over to Hartford and Owens. I would be glad to have your comments. Belknap wants to be able to submit a proposal to Miller last of this week when he expects to be in Pittsburgh again to actually file suit."

My question is, whether you sent that reply?

A. I presume I did. I don't recall sending it.

[fol. 4316] Q. Did you have any negotiations with the Miller people that you recall?

A. No.

Q. Did you have any conference with Mr. Carter or Mr. Belknap relating to dealings with the Miller people?

A. I don't recall any, but I very possibly may have had.

Q. I show you Government's Exhibit 623, which is a memorandum dated July 14, 1925, addressed to you by Mr. Carter, and ask whether that is your handwriting in the center?

A. Yes.

Q. You received that memorandum, did you not, in the regular course of business with regard to the Tucker, Reeves & Beatty situation?

A. Apparently.

Q. What is your present recollection about the problems with regard to the Tucker, Reeves & Beatty situation?

A. That group in Columbus had some patents and had some patent applications, had some licenses, and my recollection is I think they came to Owens Bottle to see whether we wanted to acquire the patents, or the applications, whichever they were, at that time, and I think that we were in interference with them or they were in interference with some of Hartford's,—I don't recall which.

Q. Then what happened?

[fol. 4317] A. After a period of time it resulted in Owens and Hartford buying them out.

Q. How much?

A. $1,600,000.

Q. Where did the money come from?

A. Owens advanced 800,000 for Hartford and paid 800,000 for itself.

Q. Directing your attention to Exhibit 623, the fifth paragraph, where Mr. Carter says, "Moreover, it is possible that Tucker & Reeves may win out in these interferences as to some important claims, thus blocking our attempt to control through the patents which Hartford expects to issue. These patents cannot issue until the interferences are ended, and that will not be for years yet unless we reach an agreement. In the meantime, the feeder field is becoming demoralized more and more as time goes on.

The purchase of Miller is necessary to reap the advantages of the purchase of Tucker & Reeves. The two go together, for Miller is almost equally involved in the interferences and capable of blocking the way indefinitely."

I will ask you, sir, whether those considerations were

part of the considerations for acquiring Tucker, Reeves & Beatty and Miller?

A. Is this the William J. Miller?

Q. Oh, yes, I am not talking about Ed. Miller. That [fol. 4318] comes later after you left the company?

A. I really don't know.

Q. You received the memorandum as indicated by your handwriting thereon?

A. Yes.

Q. Thank you, sir. I now show you an original document and ask you whether the initials in the lower left hand corner are yours on the second page,—there is no date on this?

A. Yes.

Q. What have you got there in your handwriting besides your initials?

A. 9-15-25.

Q. I will ask you to look at it and ask you whether you wrote that in connection with your work at the Owens Bottle Company in 1925?

A. I don't know. I don't know whether I wrote it or not.

Q. It is your handwriting, isn't it?

A. Those initials are, yes, sir.

Q. And the date is in your handwriting?

A. Yes, sir.

Q. It relates to the Miller situation, the Owens contract with Hartford and the Tucker, Reeves & Beatty situation, doesn't it?

A. It don't say about the Miller situation.

Q. Maybe I misspoke myself?

A. Of course I didn't read it thoroughly.

[fol. 4319] Q. Yes, there it is on the top there?

A. Yes.

Q. There is your handwriting on the second page, is that in your handwriting, too?

A. No.

Q. You don't recognize that?

A. No.

Q. It relates to the Owens contract with Hartford?

A. Yes.

Q. And the Miller situation?

A. Yes.

Q. And the Tucker, Reeves & Beatty situation?

A. Yes.

Q. Were you writing it to anyone else besides yourself in connection with your work at Owens at that time?

Mr. Middleton: I object.

The Court: Overruled.

Mr. Middleton: The question implies he wrote it.

Mr. Isseks: He says he wrote it.

Mr. Middleton: Oh, no.

The Court: He said those are his initials.

A. I said those are my initials. I may have written them. I don't recall having written it.

Q. Do you put your initials at the end of anything unless you write it?

A. Well, it was my copy of this file. I may have written it but I just don't recall having written it.

[fol. 4320] Mr. Isseks: Has Your Honor read it?

The Court: Yes.

Mr. Isseks: I offer it in evidence.

The Court: It may be admitted.

Mr. Wall: May we have our objection on behalf of Hartford and the limitation for the purposes previously stated?

Mr. Isseks: I agree with Mr. Wall. This paper is marked Exhibit 901, and offered in evidence. The witness identified it as his handwriting.

Mr. Middleton: He identified the initials in the lower left hand corner. Does Your Honor understand it as a document having been written by the witness?

The Court: Yes, the Court feels he wrote it.

(Thereupon, Government's Exhibit No. 901 was read to the Court by Mr. Kramer, of counsel for the government.)

[fol. 4321] Q. Reference is made in Government's Exhibit 901 to the Feeder Patents Company. Did you become a director of that company?

A. I don't remember.

Q. You don't remember you were one of the directors of the company along with Goodwin Smith and Knox Smith?

A. I don't recall it, no.

Q. But you won't deny it?

A. No, sir.

Mr. Isseks: At this time I offer as Government's Exhibit 902, memorandum dated November 6, 1925, addressed to

the Operating Committee, Executive Committee and Board of Directors of the Owens Bottle Company, signed by the witness for the license department; stipulated as genuine by Owens-Illinois at page 4 of the stipulation.

Mr. Wall: For the same limited purpose?

Mr. Isseks: Yes, sir. Counsel asks me if it is for a limited purpose, but I think if counsel looks at it, it has already been put in in another connection through Hartford.

Mr. Wall: Quite possibly, but the only thing I have in mind, these various exhibits speaking about deals, lead to confusion.

Mr. Isseks: I accept the amendment, for limited purpose.

The Court: It may be admitted.

(Government's Exhibit 902 read by Mr. Apsey.)

[fol. 4322] Q. Did you write that, sir?

A. I don't recall it but I don't deny that I did.

Q. Now, I show you Government's Exhibit 625 for identification and ask you whether you identify the stamp thereon as your stamp?

A. It is my stamp; yes, sir.

Q. Is there any handwriting on there of yours?

A. Yes, sir; that is.

Q. The words "not necessary" in your handwriting?

A. Yes, sir.

Mr. Isseks: Your Honor, at this time I offer this document in evidence. Your Honor will recall we offered it through Mr. Carter; at page 1794 Your Honor said, "Do you not think that some participant in this conference, or at least Mr. Baker, in whose files the document was held, should either identify the document, or should offer some testimony that he was in attendance at this or similar meetings, and that these matters were discussed?

In view of the witness' identification of his handwriting and file stamp, I offer it in evidence at this time.

The Court: It may be admitted.

Mr. Isseks: Thank you. I would like to have it read.

(Government's Exhibit 625 read.)

Q. Mr. Baker, I direct your attention to the next to the last paragraph and ask you to what reference is made when [fol. 4323] it is stated in the memorandum,

"It will be noted Feeder Patents does not take over Belknap's title to the feeder. This was left open because of the anti-trust law situation but can be handled later as desired."

A. I don't know. Did my identifying any handwriting indicate I was the author of this?

Mr. Middleton: Apparently, in the mind of the Court, it did. We welcome the opportunity for the witness to state it.

Q. Do you know who the author is?
A. No, I do not. I don't think I am.
Q. But you are not sure whether you are?
A. I don't think I would put my name before Williams', if I dictated it.
Q. But you received it?
A. Apparently did. I don't think I dictated it, though.
Q. I still ask you the question: to what is reference made in the next to the last paragraph when it is said, "It will be noted Feeder Patents does not take over Belknap's title to the feeders? That was left open because of the anti-trust law situation but can be handled later as desired"?
A. I don't know.

Mr. Isseks: No further questions of this witness at this time. No further questions at all.
The Court: You may proceed.
Mr. Middleton: Just a few questions, Your Honor.

[fol. 4324] Cross-examination.

By. Mr. Middleton:

Q. Mr. Baker, when did you first become connected with the Owens Bottle Company?
A. July, 1916.
Q. Prior to that time with what company were you connected?
A. With the Libbey Glass Company.
Q. The Libbey Glass Company had no connection with the Owens Bottle Company?
A. None at all.
Q. There was no joint ownership or joint managership?
A. No. Mr. Libbey happened to be head of both of them, but there was no corporate connection.

Q. How long were you with the Libbey Glass?

A. About six years.

Q. You became connected with it as soon as you left school I believe?

A. Correct.

Q. That was the extent of your business experience, then, with the Libbey, prior to going with the Owens Bottle Company?

A. Yes, sir.

Q. I believe you said you went with it in 1916?

A. '16.

Q. Now, in the Owens Bottle Company, as treasurer, did that carry with it the technical head of the licensing department?

A. Well, it didn't carry with it, but I was in the license department. Mr. Walbridge was really at the head of it, Mr. Biggers and I also.

[fol. 4325] Q. Mr. Walbridge then was at the head of that department?

A. Yes.

Q. You weren't a technical patent man?

A. No, sir.

Q. Did you ever have any training in patents in school or in a practical way?

A. Not in school. I had to deal with patents with the Owens Bottle Company, just picking up what I did in connection with the licensing department. No schooling in it.

Q. You weren't skilled in filing patents or applications?

A. No, sir.

Q. Nor the handling of patent applications?

A. No, sir.

Q. Or patent claims?

A. No, sir.

Q. Do you make any claim of understanding patent claims?

A. No, sir.

Q. Mr. Carter yas connected with that department at some time while you were in it?

A. Yes, sir.

Q. Did you, to some extent, rely upon Mr. Carter's skill as a patent lawyer, to advise you?

A. Yes, sir. I don't know whether he was a patent lawyer; he may have been, I don't know. He was familiar with patents.

Q. I believe you stated, under Mr. Isseks' examination, you were with Owens a total of about 10 years?

[fol. 4326] A. Yes, sir.

Q. When did you leave the company then, approximately?

A. About March 1, 1926.

Q. And since 1926 you have not been connected with this company in any way, shape or form?

A. Owens?

Q. Owens?

A. That is correct.

Q. Or Owens-Illinois, as it is now named?

A. That is correct.

Q. And in that entire time since 1926 you have been employed by Libbey-Owens, now the Libbey-Owens-Ford Glass Company, is that not correct?

A. That is true.

Q. To which you have devoted your entire time?

A. Yes, sir.

Q. Now, there is not any connection, is there, between that company, your present employer, and the Owens-Illinois Company?

A. No, sir.

Q. None whatever. Your duties, then, for the Libbey-Owens-Ford Glass Company do not give you any knowledge of what is going on in the Owens-Illinois, does it?

A. Not in a business way. We own a joint gas department, and joint gas properties; to that extent.

Q. That is a gas field near their factories?

A. That is right.

Q. But that has nothing to do with their production of glass, except furnish fuel for the factories?

[fol. 4327] A. That is right.

Q. Then in the course of your duties since 1926 have you had any connection whatever to deal with any of these matters concerning which you were questioned today?

A. I don't recall having had any.

Q. You have been asked about certain exhibits here. Did Mr. Isseks come to see you or ask you to come to his office to discuss these exhibits with you before you were put on the stand today?

A. No, sir.

Q. Were you shown Exhibits 122 and 123, for instance,

before you took the stand today, so that your recollection might be refreshed concerning them?

Mr. Isseks: I will stipulate, Your Honor, I didn't show them to him. Perhaps counsel for Owens did; I didn't.
Mr. Middleton: Counsel for Owens didn't.
Mr. Isseks: I didn't. I stipulate it.
Mr. Middleton: That was your job.

Q. What is your answer as to whether or not you saw these exhibits, Mr. Baker?
A. I don't know which ones.
Q. 122 and 123 here (showing the witness).

Mr. Philbin: May I ask for the dates of them?
Mr. Middleton: June 16th, 1924, is Exhibit 122, a letter to Mr. Baker written by Mr. H. K. Smith, and 123 is a letter [fol. 4328] written by Mr. Heintzelman, president of the Monongah Glass, to Goodwin Smith, dated June 19th, 1924.
The Witness: (Examining the same.) I have never seen that one but I think I have seen this one.

Q. You never saw Exhibit 123?
A. 123.

Mr. Isseks: Which is the one you said you saw?
The Witness: I think I have seen this one.

Q. 122?
A. Yes.
Q. Mr. Isseks did not show that to you before to refresh your recollection?
A. No, sir.

Mr. Isseks: I didn't show him anything, I stipulated.

Q. I ask you concerning Exhibits 65 and 66.

Mr. Isseks: I will stipulate I didn't show him anything.
Mr. Middleton: That doesn't take the sting out of the examination and insinuation.

A. No, I don't recall that.
Q. Had you been shown Exhibit 66?
A. I don't recall it.
Q. Now, you have just answered one question,—I will ask you whether you have seen those exhibits in the last

[fol. 4329] fifteen years since you left Owens-Illinois Company?

A. The one, I think.

Q. Just the one document, not 65 and 66 which I just showed you?

A. No. I had not seen Mr. Heintzelman's letter.

Q. In fifteen years?

A. I don't think I have ever seen that until just now.

Q. Mr. Isseks questioned you concerning Exhibit 396, dated May 19, 1924, letter addressed to you by Goodwin Smith. I will ask whether you have ever seen that letter in the last fifteen years until the present day, before you here today?

A. I don't recall having seen it, no, sir.

Q. Turn to 397, letter dated May 23, 1924, by yourself to Goodwin Smith. Have you seen that in the last fifteen years?

A. I don't recall it, no, sir.

Q. I call your attention to Exhibit 619, which is a letter dated June 2, 1924, or rather, a memorandum, addressed to you by Mr. Carter. Had you read that in the last fifteen years, if you ever read it?

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[fol. 4330] A. I don't recall having seen this letter.

Q. Just two more.

A. I saw it originally but I mean not in fifteen years or more.

Q. Exhibits 623 and 625, in the same book of exhibits. I will ask you the same question concerning them.

A. I don't recall it, 623. 624, you say?

Q. 625.

A. (Examining same.) No, I don't recall having seen that.

Q. Now, Mr. Baker, mention has been made of the Tucker, Reeves & Beatty patents, and their acquisition in some form back in 1925. Have you discussed that matter with Mr. Isseks before this trial?

Mr. Isseks: I stipulate——

Q. Have you discussed it with anyone else, to refresh your recollection as to the details concerning that purchase?

A. I haven't discussed it with anybody particularly, but [fol. 4331] I couldn't very well forget it.

Q. In other words, I am asking you whether you have been prepared by anyone's interviewing you so that you could recall these details of transactions so long ago?

A. No, sir.

Q. Have you any interest in Owens-Illinois or in Hartford?

A. Any interest?

Q. Any interest in this lawsuit?

Mr. Isseks: I respectfully request he be permitted to answer the first question as to whether he has any interest in Owens-Illinois. I am anxious to find out myself.

A. You mean a share interest?

Mr. Isseks: I don't know. He asked the question.

The Witness: I have a very small share interest, that is the only interest I have.

Q. You are not in any way connected, I think you said that?

A. That is correct.

Q. What is your position with the Libbey-Owens-Ford Glass Company, Mr. Baker?

A. Vice-president and secretary.

Q. Now, Mr. Baker, have you in answer to Mr. Isseks' question given all of the recollection that you have concerning the matters which he asked you about?

A. Absolutely.

Mr. Middleton: I think that is all I care to ask.

[fol. 4332] The Court: Any further questions on defense? Any further questions by the government?

Mr. Isseks: Yes.

Re-direct examination.

By Mr. Isseks:

Q. Who showed you Government's Exhibit 122? We never showed it to you before. You said somebody showed it to you. Letter addressed to you by Mr. Herbert Knox Smith.

Mr. Wall: He said he saw it. He said he thought he had seen it. I don't recall his saying somebody showed it to him.

Q. Where did you see it?

A. Well, somebody showed it to me. I don't know whether this is one of the letters Mr. Middleton said you were going to show me to identify; I don't recall.

Q. When did Mr. Middleton ask about it?

A. Ask about it?

Q. You said you saw it before today?

Mr. Middleton: I beg your pardon.

The Witness: I am mistaken. It was Mr. Williams, I think. That is where I saw the letter.

Q. How long ago was that?

A. A week. One day I was over here and you said you were going to have me on for a short while to identify some letters. I believe Mr. Middleton got a list of letters from you, or something of the sort.

Q. Where did he show it to you—in the courtroom?

A. No, if he is the one who showed it to me it was in [fol. 4333] his office; or, rather, Mr. Williams showed it to me. I don't believe Mr. Middleton was present at the time.

Q. Did he show you any more pieces of paper than this?

Mr. Middleton: I will tell you, this list you gave——

Mr. Isseks: The witness will answer. How many did he show you?

A. I think he showed me six or eight—one or two missing, I believe.

Q. Did you go over the papers with him?

A. No.

Q. Did he call you to his office?

A. I asked him about what I was going to be asked to identify—Mr. Williams, I believe it was.

Q. Did you ever make such an inquiry of me?

A. No, sir.

Q. Or any of my associates?

A. No, sir.

Q. When were you served with a subpoena in this case? Last September, was it not?

A. I was going to say last year some time.

Q. Last September, eight months ago. Did you ever come to any one of us connected with the government and say, "What am I going to be asked about?"

A. No.

Q. But Mr. Middleton or Mr. Williams asked you to go to their office?

[fol. 4334] A. I spoke to them about it originally.

Mr. Isseks: That is all.

Re-cross examination.

By Mr. Middleton:

Q. You came in one morning while we were here in court and read the seven or eight letters?

A. Before court.

Q. That the government had designated they were going to ask you about: that is right, isn't it?

A. Yes, sir.

Q. These letters concerning which Mr. Isseks asked you and questioned you weren't in that list?

A. No, those I spoke about weren't in the list, no.

The Court: Anything further?

Mr. Isseks: We have no questions.

The Court: What are your plans for tomorrow?

Mr. Isseks: Mr. McNash will be on the stand all day and perhaps the next day; Mr. Werbe will be here on Thursday, and we have witnesses for Friday and Monday, too.

(Adjournment taken to following day.)

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[fol. 4335] (At 10 o'clock a. m., Wednesday, April 23, 1941, the trial was resumed.)

Thereupon the government called as a witness, J. Harrison McNash, who, being first duly sworn, testified as follows:

Direct-examination.

By Mr. Isseks:

The Witness: Mr. Isseks, will you be just as patient with me as you can, because I have never been on the witness stand before?

Mr. Isseks: I certainly will. I am going to ask you to be as patient as you can with me.

I would like to point out, I think through inadvertence, Your Honor did not formally admit Government's Exhibit 874 and 875, although my recollection is you did. I would like to have the record show it.

The Court: My record shows they were admitted.

Mr. Isseks: I believe the stenographic record did not.

Q. Mr. McNash, where do you reside?

A. Wheeling, W. Va.

Q. With what company are you connected?

A. Hazel-Atlas Glass Company.

Q. Any other company besides the Hazel-Atlas Glass Company.

A. Some subsidiaries of the Hazel-Atlas Glass Company.

Q. How long have you been connected with those companies, sir?

A. Since 1903.

Q. What positions have you held with the Hazel-Atlas [fol. 4336] Glass Company since you have been connected with it?

A. It is a long list.

Q. I am interested in the background, and the Court is, I am sure.

A. Office boy, check payrolls, statistics, costs, during that part of my connection with the Hazel-Atlas I spent a number of summers in various plants of our company; as a turning-out boy, carrying-in boy, learning to operate glass-making machines: I have had purchasing experience; I have been foreman in various departments, superintendent, general superintendent, chief clerk to the general manager, assistant general manager, secretary, executive vice-president, president.

Q. In what year did you become president, sir?

A. In 1924.

Q. And prior to that you were first vice-president, were you not?

A. Well, 1924 was quite a year. I began that year as secretary, I believe. I was on the board. I was kicked off the board. I was made vice-president and secretary. I was put back on the board, executive vice-president, and president, in that year.

Q. Quite a career?

A. Quite a career.

Q. Who was the president before you, sir?

A. J. C. Brady.

Q. Now, at that time, in 1924, the Owens Bottle Company had a substantial stock interest in your company, did it not?

[fol. 4337] A. They did.

Q. Approximately what percent interest did they have at that time?

A. 1924?

Q. Yes, sir.

A. I expect it was about 16%.

Q. Is it a fair question to ask whether or not they were responsible for the maneuvering of your being off and on?

A. No, positively had no connection with it at all. That was a local stockholders situation.

Q. How long did they continue to have that 16% stock interest?

A. The Hazel-Atlas Glass Company acquired the interest of Owens in Hazel in 1926.

Q. Have you been a director of the Hazel-Atlas Company since 1924?

A. I was still on the board in 1922, with the interruptions I have mentioned a while ago.

Q. You continued since then?

A. Yes.

Q. You have been president since 1924, too?

A. Correct.

Q. And you owned stock in the company, sir?

A. Yes, sir.

Q. Is the stock listed on any exchange?

A. New York Stock Exchange.

Q. What position does your company hold in the glass container industry, in size; is it first, second, or the third-

[fol. 4338] largest company, as you understand?

A. That does not worry us very much, but I think we are second in size.

Q. How long has your position in that respect continued?

A. As far as I recall, I expect quite some years.

Q. Since about 1924, is it not?

A. At least.

Q. Approximately what is your volume of business today,—I mean in dollars, gross, for the year 1940?

A. It will exceed $30,000,000 a year.

Q. Have you any present recollection of the figures in 1924?

A. It would be just the vaguest recollection.

Q. I will take it, please.

A. Probably 24—no, '24 was not such a good year—you see, there was a depression in '21, lasted in '22, things were better in '23—I expect about 23,000,000—24,000,000.

Q. In 1931 approximately what was your gross?

A. I think it exceeded 30,000,000.

Q. Your volume has declined since 1931 from time to time?

A. No, 1931 was a very unusual year, because of an unusual demand in that year for domestic fruit jars.

Q. Let's take the figure for 1932, approximate figure.

A. I expect twenty-six or twenty-seven million? I am only pulling those figures out of the air.

Q. I understand. That is your present recollection?

A. Yes.

[fol. 4339] Q. Now, for the period from 1922 to 1926, when you testified Owens Bottle Company had approximately a 16% stock interest in Hazel-Atlas, were there any representatives of Owens on your board of directors?

A. In '24?

Q. '22 to '26 is what I said.

A. '22 to '26, yes.

Q. How many were there?

A. Two.

Q. Who were they, do you recall?

A. The last two S. S. Cochrane and W. H. Boshart, but I think Mr. Cochrane was on the board only in '25 and part of '26. Prior to that time the Owens Company was represented by W. H. Boshart and J. D. Biggers.

Q. You are familiar, are you not, generally, with the history of your company, going back as early, let's say, as 1919, when you were assistant general manager and secretary? I am reading from your affidavit.

A. Yes.

Q. Your company at one time used automatic machinery which was licensed from the Owens Bottle Company, did it not?

A. Yes.

Q. About what year did you take that license, sir?

A. 1909.

Q. And was that license for any limited fields of ware or was it for all fields of ware?

A. It was an exclusive license particularly for the wide-mouth food line, and it was an exclusive license.

[fol. 4340] Q. In that field?

A. That is right.

Q. Were you permitted to manufacture on Owens suction machines, other lines of glass containers other than wide-mouth ware?

Mr. Philbin: Objection. I understand there was a written license contract which fixed the mutual rights and obligations of the parties, namely, in 1909, license contract between the Owens Company and the Hazel-Atlas Company. I have no real objection to government counsel asking the witness what he thinks was in that agreement but I do not see it is going to be very helpful to the Court.

Mr. Isseks: All I want is the witness' understanding, for the background, because I don't want to put the document in. From the government angle it is not in issue. I am trying to get the background of the witness.

Q. What is your understanding of your rights in fields of ware other than in which you testified you had exclusive rights from the Owens Bottle Company in 1909, subject to correction?

A. As I said a while ago, the right was an exclusive right largely in the wide-mouth food line. Now, there were certain extensions to that brought about by the fact that the basis of that right was a marked catalog.

Q. I didn't hear you.

A. A marked catalog. A catalog that the Hazel-Atlas [fol. 4341] Glass Company had and was selling from at that time, and certain items in that catalog were initialed by J. C. Brady for our company and W. S. Walbridge for Owens Company. So there were some exceptions to that general statement I made, but I would not pretend to tell you what the exceptions were. Let me add this also: that inasmuch as our operation under those Owens rights was almost confined entirely to the manufacture of wide-mouth food jars, we paid very little attention to the extended rights due to these initialed items in the catalog; that was our interest.

Q. If I understand you correctly, from 1909 to some other date, you primarily manufactured wide-mouth fruit jars?

A. Wide-mouth food line,—not fruit jars,—but something else.

Q. I misunderstood. How long did that continue where your primary manufacture was wide-mouth food containers?

A. I said the primary right under Owens was wide-mouth food jars. Our primary manufacture wasn't necessarily that.

Q. I am trying to find out; I misunderstood you. What were you manufacturing primarily from 1909 until some date which you have fixed?

A. The wide-mouth food line.

Q. Until what period was that?

A. We still manufacture it, not under the Owens.

Q. You didn't understand me. It is my fault, I am sure. [fol. 4342] A. I hope so.

Q. I am trying to find out how long your company continued to manufacture the wide-mouth food line on Owens' suction machines?

A. Well, the Owens machine operation was discontinued in 1929—1930.

Q. Between 1929 and 1930 were you manufacturing wide-mouth food containers on Owens' suction devices?

A. I think the first Owens machine was put in in 1910.

Q. During that period you were using the suction machines were you not?

A. Let me get this in your mind. You cannot just get an Owens right and start to manufacture under the Owens rights. You have to build furnaces and other machines. It is quite a long proposition. What is your question?

Q. My question is, during the period 1909 to 1929 were you manufacturing primarily wide-mouth food jars?

A. By the Owens rights.

Q. Were you manufacturing anything else during that period?

A. Yes, sir.

Q. What were you manufacturing in addition to those wide-mouth food jars?

A. We were making small bottles, vaseline, ink, glue,—that sort of thing; and opal glass, that is a glass made especially for packing salves, rouges, cosmetics of all kinds, at Hazel No. 1 in Washington, Pennsylvania. And at Atlas Plant in Washington, Pennsylvania, we were making domestic fruit jars. At Clarksburg, W. Va., we were mak-

[fol. 4343] ing largely common tumblers and vessels for meat and fish and products of that description. Then we acquired the Kearns-Gorsuch Bottle Company in 1920, and we expanded their operations, making a line there of proprietary medicine bottles, catsup bottles, beverage bottles and bottles of that description, and so forth. I would say that probably only a third of our operation was under this Owens right you have in mind.

Q. What type of equipment were you using in connection with your manufacture of these other fields of ware during that period?

A. So-called feeders.

Q. What year did you start using "so-called feeders"?

A. That use began, I believe, in 1906; it was a gradual development.

Q. So you were using, throughout this period, 1910 to 1929, feeders as well as Owens suction devices, is that right, sir?

A. Yes.

Q. Now, during this period, any time during the period, were efforts made on behalf of Owens to get your company to become a licensee of either Owens or Hartford or Hartford-Fairmont, in connection with your feeder devices?

A. No effort on the part of Owens, because we already had a right to their development under the 1909 license.

Q. That is the position you took at that time?

A. Owens subsequently, before 1924, when they made their contract with Hartford, were in position to offer us a [fol. 4344] license under the Hartford inventions, and they made such an offer.

Q. What happened?

A. I think we first asked to see the arr gement, contract arrangement, between Owens and Hartford.

Q. Between Owens and who?

A. We asked to see the arrangement between Owens and Hartford first.

Q. Who is "we"? When you say "we",—Hazel-Atlas?

A. Correct.

Q. Were you present at the time?

A. Almost.

Q. Tell us what happened,—Mr. Brady made the request.

A. Mr. Brady made the request.

Q. He told you about it?

A. That is right. I think I told him about it.

Q. Let's find out the details.

A. What is it you want to know?

Q. You started to say,—unless I misunderstood you,—that you were trying to find out what the arrangement between Owens and Hartford was?

A. I naturally was speaking for the Hazel-Atlas Company.

Q. I am trying to find out who the "we" is, the individuals who made the request.

A. Mr. Brady made the request.

Q. You say you told him?

A. We worked rather closely together. I was his man Friday, as it were.

[fol. 4345] Q. How did you make the request to Mr. Brady?

A. Mr. Brady and I, naturally, being in the same office, were in consultation constantly.

Q. What was the occasion for your making the request of Mr. Brady?

A. Mr. Brady was the president of the Hazel-Atlas Company and I was his assistant.

Q. Yes, sir?

A. And we had been requested by the Owens to consider a license under the Hartford inventions. We didn't think we could give the right consideration to that question unless we knew what the arrangement was between Owens and Hartford. In addition to that we requested some basis of fact concerning their patent standing, and we asked to see, I believe, just what patents they had.

Q. Can you fix the time, the year?

A. Well, I think we were first approached by Owens to take a Hartford license probably in May or June of about 1924.

Q. Did you talk to anybody of Owens yourself, you personally?

A. At that particular time?

Q. Yes.

A. I don't think so.

Mr. Philbin: May I remind the Court that the date of the contract between Hartford and Owens was April 9, 1924?

The Court: Yes, you may note that.

Mr. Philbin: Thank you.

[fol. 4346] The Witness: I don't think I discussed it with anybody in that short interval of time in the Owens organization.

Q. But Mr. Brady told you he spoke to somebody?

A. I think he either phoned or wrote a letter, or something; I don't know.

Q. To you?

A. No, sir.

Q. How did you find out about it? I am sorry to be so specific. I am trying to find out how you found out about this back in May or June of 1924. I have rules of evidence to follow, and I have to make a record. Who told you?

A. Who told me what?

Q. Who told you somebody in Hazel-Atlas was asked by Owens whether or not you would take a license, in May or June of 1924? How did you find out about it?

A. When you refer to J. C. Brady and me at that period, you are referring to the same person.

Q. That is a little difficult, I am sorry. You say you didn't go to the Owens people yourself. I asked you the question specifically and you said you had no recollection of dealing with the Owens people yourself. Is that a fair statement of what you answered?

A. Yes, I will take that.

Q. Then I am trying to find out who told you: did Mr. Brady tell you?

A. Probably.

Q. Did Mr. Brady tell you with whom at Owens he spoke?

[fol. 4347] A. I think at that time any conversation between Owens and Hazel-Atlas would be between Mr. Blair for Owens and Mr. Brady for the Hazel-Atlas.

Q. What happened as the result of the request which I believe your company made, that you wanted to see the contract in 1924, if you know?

A. I know.

Q. What happened?

A. We eventually got a copy of that contract.

Q. When?

A. I think possibly in June or July.

Q. of 1924?

A. 1924.

Q. And you still have the copy?

A. I am not certain.

* * * * * * *

[fol. 4348] Q. You testified you were using feeders from 1904 to 1928?

A. I think I testified 1906.

Q. I misspoke myself. I should have said 1906. Were you using feeders acquired from any other source than your own make during this period?

A. No, sir.

Q. You didn't have a Miller feeder, did you?

A. No, sir.

Q. Did Kearns-Gorsuch have a Miller feeder?

A. Kearns-Gorsuch Company did not have a Miller feeder, but when we acquired Kearns-Gorsuch, which was in 1920, Kearns-Gorsuch was using a Hartford-Empire paddle feeder.

Q. Did you company or any of its subsidiaries, during the period of 1906 to 1928, have any feeders other than your own feeders?

A. No, with the Kearns-Gorsuch exception.

Q. Did anybody have a Howard feeder in your group?

A. I don't think so.

Mr. Philbin: I assume the question is intended to mean feeders used in ordinary commercial production and is not intended to include perhaps model feeders or experimental feeders used for purposes of suit, and which were never [fol. 4349] used in ordinary commercial production.

Mr. Isseks: That is right, only in commercial production.

The Witness: Then we would not have one.

Q. How about Tucker, Reeves & Beatty, did you have any of those?

A. No.

Q. What did you call the feeder your company was using, if you gave any name to it?

A. Well, we referred to them by various names.

Q. Let me have them, please.

A. Brookfield, Good.

Q. Brookfield, B-r-o-o-k-f-i-e-l-d?

A. Yes.

Q. Did you say Brook, B-r-o-o-k-e, too?

A. Brooke.

Q. B-r-o-o-k-e?

A. Yes. Good.

Q. Anything else?

A. Then occasionally, for a while, when somebody else would make some little improvement, it might be called by that engineer's name.

Q. Do you remember the names?

A. I think that covers it.

Q. Now, let's start with the Brooke feeder. Was Brooke an inventor of yours? By that I mean an inventor in the employ of one of your companies?

[fol. 4350] A. No.

Q. Did you acquire rights under the Brooke feeder from some other source?

A. Yes.

Q. Did you purchase it or get an exclusive right or non-exclusive right? I am trying to find out what the background is, and your present recollection.

A. I think we paid a royalty for it.

Q. Do you recall now when you acquired the rights and when the rights expired, your general recollection, the best you can say?

A. I think those rights were acquired about 1903 or '04, thereabouts.

Q. When did they expire, do you know?

A. I think about '12 or '14, but I wouldn't be certain.

Q. Was Mr. Brookfield an inventor of your company?

A. No.

Q. Did you acquire rights from Mr. Brookfield or from some other source?

A. Yes.

Q. You purchased the patent?

A. Purchased the patent.

Q. What year, do you know?

A. I expect it was fairly close to the time of acquiring Brooke.

Q. About 1903?

A. '03, '04 or '05; thereabouts.

[fol. 4351] Q. Mr. Good was an inventor of yours?

A. Yes, he was an employe of ours.

Q. Did he ever get a patent?

A. He has gotten patents.

Q. What year, do you know, sir?

A. About that same time.

Q. 1903 or '4?

A. Yes.

Q. Do you remember the names of any other of your feeders that you used during this interval, and the interval that you gave us was 1906, your date, to 1928, or '29?

A. That is about right, what I gave you.

The Court: Assuming that the suction machine, the Owens machine was invented about 1909, these feeders then preceded the suction machine by probably six years?

A. I believe the Owens patents are prior to 1909.

The Court: My remembrance was they came about 1909. I did not know that the feeders that were used by you antedated the suction machine by as much as five or six years?

The Witness: We had feeders in commercial operation when we acquired the Owens rights.

Mr. Philbin: Those feeders that Your Honor has in mind were the Brooke Stream feeders and they were not the reciprocating feeders with which the Hartford inventions are principally concerned. The use of the reciprocating [fol. 4352] plunger feeders by Hazel-Atlas Company was not until about 1921 or 1922, but as early as 1903 they were using this particular type of Brooke feeder or Stream feeders.

Q. You heard what Mr. Philbin said?

A. Yes.

Q. Were these Brooke and Brookfield and Good feeders non-reciprocating?

A. They called them stationary plug.

Q. Did you start in 1921 to use a reciprocating plug feeder?

A. The record so says.

Q. That is the first time you used it?

A. According to the record.

Mr. Philbin: Again I assume all these questions mean in ordinary commercial production and not experimentally?

Mr. Isseks: That is my understanding.

Q. At that time when you started using a reciprocating plug feeder, whose devices were you using at that time in your company, who made them?

A. Our view was that the reciprocating plug in 1921 was covered by the Brookfield patent.

Q. I am sorry then, there is something wrong. You just said it was stationary plug when I asked you for Brooke and Good and Brookfield. I asked if they were stationary and you said yes?

A. Then I misunderstood you.

[fol. 4353] Q. The contention you made in 1921 and thereafter was that the Brookfield patent covered the plug feeder?

A. Correct.

Q. Do you claim any other right you had covering reciprocating plug feeder?

Mr. Philbin: Is the question as to what Mr. McNash or Hazel-Atlas Company was claiming in 1921?

Mr. Isseks: That is right, sir, 1921 to '29 when you said you stopped using the suction feed.

Q. Isn't that what you testified to, in 1929 or '30 you stopped using the suction machines?

A. We stopped using the Owens machine in '29 or '30.

Q. Between '21 and '29 or '30 when you were using reciprocating plug feeders, were you claiming then rights in connection with any other patents or applications or inventions other than Brookfield, other than you have just testified within the last minute or two?

A. I think the Owens secured their Lott patents in that interval of time.

Q. Yes, sir.

A. So that our basis for use of a reciprocating plug would be based on the Brookfield patents and the Lott patents.

Q. Anything else besides those?

A. I would not think so.

Q. Now, you testified about one effort made by Owens in 1924, I think you said in May or June, to get your com-

[fol. 4354] pany to become a Hartford licensee. Were there any other efforts, sir, that you know of thereafter and up to 1929 or 1930, the time when you stopped using suction entirely?

A. Read that question again.

(Question read.)

A. Oh, those efforts to a certain extent were more or less continuous.

Q. Throughout the whole period?

A. I think so.

Q. Did you have any conference with anybody in that regard, sir, during that period?

A. We had conferences with Owens in '25.

Q. Did you talk to anybody?

A. Yes, I think I talked to Mr. Boshart.

Q. What was the conversation; if you can fix the time any better I would appreciate it?

A. Oh, just the usual conversation that they had secured for us this option and discussion of patents and things of that kind in an effort to convince us that our operation required the Hartford inventions.

Q. Let's go back. You said that in June of 1924 you saw the Owens-Hartford contract?

A. That is right.

Q. Of course you saw immediately over and above $600,000 of fixed income royalties, Owens' share 50-50 with Hartford, did you not,—that came to your attention in 1924?

A. Whatever the contract was.

[fol. 4355] Q. What is your best recollection now?

A. That is about right.

Q. You knew, in other words, in June, 1924, that Owens was getting one-half of all royalties collected by Hartford over and above $600,000?

A. That is about right.

Q. Did you then take any position to Owens in regard to any license that you might take?

A. We took the position we should see what the patent strength really was.

Q. Did they show it to you?

A. Yes.

Q. In '24?

A. No, in '25, or it might have been late '24. Late '24 I would say.

Q. What did you say then after they showed it to you?

A. We had to investigate those patents. It took quite a long time to make that investigation.

Q. Approximately how long?

A. I suppose two or three months.

Q. Then what did you say?

A. The result of that investigation on the part of our engineers and patent attorneys was that it did not appear

to us that the patent strength was such as to justify the license that we were offered.

Q. May I ask what license you were offered?

A. We were offered a Hartford-Empire license first I [fol. 4356] believe on the basis of approximately $75,000 per year for two years.

Q. Regardless of what the production was?

A. Yes.

Q. You turned that down?

A. The idea in that was, that they would in that way satisfy our doubts as to the patent strength expecting to establish those patents in the meanwhile.

Q. Did you turn that offer down?

A. We turned that offer down——

Q. When, about?

A. Shortly after it was made.

Q. I am sorry, sir. I don't know when it was made so I don't know when it was turned down?

A. That offer, I think, was made some time in the early part of '25.

Q. And turned down some time in 1925?

A. Shortly after that.

Q. At any time after that offer did Hartford or Owens ask you again to become a licensee of Hartford?

A. At about that time we began receiving a number of infringement notices.

Q. From whom?

A. We got one from Tucker, Reeves, and I believe, too, that some time there were some very lengthy complicated patent interferences in the Patent Office between the Hazel inventors and the Hartford inventors.

[fol. 4357] Q. The Hazel inventors,—who do you mean, the Brookfield?

A. No.

Q. Good?

A. Good, Bowman, and Stenhouse.

Q. I see.

A. I am trying to answer your question.

Q. There were people other than Brookfield——

A. —So there was a very complicated patent lawsuit situation. That is when the war began.

Q. That is what I am trying to find out?

A. While there might have been a background of an offer

now and then of a license, we were so busy defending ourselves I have lost probably all recollection of it.

Q. Of the details?

A. Yes.

Q. But you are not changing the testimony between '25 and '29 there was continous offer of a license, or do you want to change it?

A. No, I don't think so.

Q. Because you were there, and we want your best recollection?

A. That is right.

Q. In other words, while the battle was still going on they were still making offers?

A. Probably.

Q. You said there were interferences with Bowman and Stenhouse.

[fol. 4358] A. I am not mentioning the exact interferences.

Q. You were claiming besides Brookfield and the rights under the Lott, the rights under other claims?

A. Yes. We had applications in the Patent Office.

Q. There were other claims besides the Brookfield and the rights you claimed through Lott?

A. We had other patents, if that is what you mean.

Q. Or applications?

A. Or applications.

Q. Now, you talk about a war in addition to this battle in the Patent Office. Were there any other battles?

A. I would not think so.

Q. There was litigation, wasn't there?

A. That is the battle.

Q. Besides the Patent Office?

A. Oh, yes.

Q. Who sued who and where, if you remember?

A. Those suits are a matter of record.

Q. Your best recollection. I know they are a matter of record and they have all been stipulated to. Did Hartford sue you?

A. Hartford notified us of infringement I believe early in 1926, and a suit began against the Kearns-Gorsuch Bottle Company, our then subsidiary, within a month or two after that.

Q. '26?

A. '26.